

Report on the

# Alabama Board of Podiatry

Birmingham, Alabama



## Department of Examiners of Public Accounts

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August 11, 2004

Representative Howard Sanderford  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Mr. Sanderford:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of Board of Podiatry in accordance with the ***Code of Alabama 1975***, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Board of Podiatry, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones  
Chief Examiner



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## **PROFILE**

### **Purpose/Authority**

The Board of Podiatry was created by Act No. 741, *Acts of Alabama 1967*. The board regulates the practice of podiatry in Alabama by examining and licensing podiatrists. The legal authority for operation of the board is the *Code of Alabama 1975*, Sections 34-24-230 through 34-24-276. Additionally, the *Code of Alabama 1975*, Sections 20-2-2 and 20-2-50 through 20-2-58 are the legal authority for the board to certify and inspect podiatrists who prescribe controlled substances for compliance with the Controlled Substances Act.

### **Board Characteristics**

<b>Members</b>	7 members
<b>Term</b>	5 year staggered terms. No member of the board can be reappointed for a successive term; however, previous board members are eligible for non-successive appointments.
<b>Selection</b>	Appointed by the governor
<b>Qualifications</b>	25 years of age Alabama resident Engaged in the continuous practice of podiatry for at least 5 years next preceding appointment
<b>Racial Representation</b>	Required by statute - at least one black member at all times Two black members
<b>Consumer Representation</b>	No statutory requirement
<b>Geographic Representation</b>	No statutory requirement
<b>Compensation</b>	Members receive \$250 per day employed in the discharge of official duties plus mileage and per diem as provided to state employees.

**Operations:**

<b>Administrator</b>	Administrative Assistant—a part time, at-will employee, Gail Clark, hired by the board. Annual salary is currently \$28,800.
<b>Location</b>	311 Saint Charles Street Homewood, AL 35209 (Residence of administrative assistant)
<b>Examinations</b>	Examinations are given semi-annually in January/February and June/July. The state law exam is prepared, administered and graded by the administrative assistant. The national exam, the PMLexis, is prepared, administered, and graded by the National Association of Podiatric Boards.
<b>Licensees</b>	126 In-state 28 out-of-state 154 total at 12/31/03
<b>Renewals</b>	Licenses subject to renewal annually on September 30. Thirty-one day grace period to renew - thereafter pay a penalty of \$300.00 plus the renewal fee. No date specified by law for lapsing of license due to non-renewal ( <i>Code of Alabama 1975</i> , Section 34-24-275). License may be suspended or revoked by the board for non-renewal and payment of fees. ( <i>Code of Alabama 1975</i> , Section 34-24-276(7))
<b>Reciprocity</b>	The board may issue a reciprocal license under the following conditions: Applicant has three years experience, Applicant currently licensed by another state or territory, Applicant licensed under requirements equal to Alabama's Reciprocal state or territory offers reciprocal licensure to Alabama podiatrists
<b>Continuing Education</b>	Yes, mandated by law as a condition for renewal - 12 hours annually.
<b>Employees</b>	The board employs one part-time administrative assistant without contract to perform clerical and administrative functions. The board also uses the services of an investigator to perform inspections and investigations, also without contract.
<b>Legal Counsel</b>	Randolph Reeves P. O. Box 4389 Montgomery, AL 36103
<b>Subpoena Power</b>	Yes



<b>Internet Presence</b>	www.alabamapodiatryboard.org – The website contains the following information: Welcome screen with link buttons Board members information (incorrect addresses for some members) Law Administrative Rules Board News Search for licensees Alerts (linked at the Search for licensees screen)
<b>Attended Board Member Training</b>	Gail Clark, the Administrative Assistant, attended the September 18, 2002 class.

### **Financial:**

<b>Source of Funds</b>	Licensure fees
<b>State Treasury</b>	No
<b>Unused Funds</b>	Unexpended balances at 9/30 over \$50,000 must be transferred to the state's General Fund.

## **SIGNIFICANT ITEMS**

- 1. When asked if any of the Alabama Board of Podiatry laws, rules, and polices are an unnecessary restriction on the practice of the profession, 45% (34 of 76) of the licensees responded yes.** Of those who made comments (14), seven mentioned the limited scope of practice and six mentioned the required advertisement disclaimer to be an unnecessary restriction.
- 2. Licensees are concerned over the issue of physician recognition.** Twenty-five of seventy-six respondents indicated that being recognized as a physician is a primary concern.
- 3. The board does not examine or license applicants in the manner prescribed by its enabling statutes.** The entire examination and licensing process is done by the administrative assistant without input from the board. The board examines applicants only on knowledge of Alabama statutes and the board's administrative rules. Knowledge of podiatry is tested by national examination. The board's administrative assistant prepares the Alabama examination, proctors the examination, grades the examination, and then issues the certificate upon completion of the other licensing requirements and payment of fees. This procedure is not in accordance with examination procedures prescribed by law.

The *Code of Alabama 1975*, Section 34-24-256 states that, "The State Board of Podiatry shall on the day of the examination furnish each applicant with official blank paper, of uniform size, which size shall not vary but be kept uniform from year to year, and such official paper shall be paid for out of any funds received from fees paid by applicants. Before taking the examination, each applicant shall register his name and post office address, with such other facts as the board may require, and each applicant shall be given a number under which he shall be examined,

which number shall be endorsed on the register, which must be kept securely by the secretary-treasurer of said board. Within 10 days after the grading of papers, each member of the board shall forward all papers graded by him to the secretary-treasurer.”

In current practice, the applicant places his/her name on the cover sheet of the exam. No numbers are issued, the board members do not proctor or grade the exam, and the secretary-treasurer does not receive the graded papers.

**4. The following deficiencies in the board’s operations indicate that it is not as well acquainted as it should be with applicable laws and regulations governing its administrative matters. During our most recent examination, we found the following deficiencies.**

- A. We found twelve instances where invoices were paid late. Four incurred late charges that could have been avoided by timely payment. In addition, a late payment resulted in duplication of payment. The board paid an invoice which included \$15.45 that it had paid but which was brought forward because the payment had not been made in a timely manner.
- B. The board’s property was not insured, despite the existence of a state program of insurance for state agency property. The board’s offices are located in the home of the administrative assistant, who stated that she had concluded (incorrectly) that the state property in her home was insured under her homeowner’s policy. The *Code of Alabama 1975*, Section 41-15-1 through 41-15-30 provides for a program of insurance for state property and is administered by the Department of Finance and the State Treasurer.
- C. The board does not have a recovery plan for its computerized systems and records in case of disaster. The board’s records disposition authority approved by the State Records Commission states that the board “should develop procedures for: (1) backing up all permanent records held in electronic format; (2) storing a back-up copy off-site; and (3) migrating all permanent records when the system is upgraded or replaced.”
- D. One of the fees charged by the board is not included in its administrative rules. The board’s Administrative Rule 730-X-3-.10 states that the fee for application for license will be no more than \$200. A fee for licensure is not mentioned. During the board’s meeting of June 8, 1990, the board voted to increase its fees to \$250 effective 10/1/1990. The board has been charging the \$250 licensure fee since October 1990 without creating the fee in its administrative rules, which carry the force of law. The state’s Administrative Procedure Act codified in *Code of Alabama 1975*, Sections 41-22-4(b) and 41-22-5(d) renders any rule adopted by the board invalid unless the rule is processed and published in accordance with the Administrative Procedure Act. This requirement also applies to amendment of existing rules, according to the *Code of Alabama 1975*, Section 41-22-3(9).
- E. The board destroyed controlled substance permits in order to keep license numbers and permit numbers the same for each. No formal procedure was in force for destruction of the permits and no record of destruction was made. The sensitive nature of the permits requires full accountability for all blank permits purchased by the board.

- F. The board withheld deposit of amounts received in order to prevent operation of a law that mandated transfer to the state's General Fund of balances exceeding \$10,000 at fiscal year end. The law has since been changed to increase the retained amount to \$50,000. The *Code of Alabama 1975*, Section 34-24-253 states that, "...Should the funds in the hands of the board at the end of any fiscal year be more than fifty thousand dollars (\$50,000), the excess of this amount shall be paid into the General Fund in the State Treasury."
- G. The administrative assistant did not always comply with the *Code of Alabama 1975*, Section 34-24-258, which requires the board to make expenditures on checks signed by the Administrative Secretary and counter signed by the President or the Secretary Treasurer. Five checks were not signed by the administrative assistant. Two checks exhibited the forged signature of a local (Birmingham) podiatrist who was neither the administrative assistant nor a member of the board. The administrative assistant stated that she signed podiatrist's name to the checks because she needed to make payments. The two checks were for her salary and for services provided by BellSouth. The administrative assistant also stated that she makes small purchases without the consent of the board because the board has told her to do so. She stated that the board's secretary/treasurer pre-signs checks for her use. These conditions unnecessarily increase the risk that state funds will be lost or misused.
- H. The board paid fees for the services of two attorneys, an investigator, and a web designer without adhering to the procurement and reporting processes required by law.

The *Code of Alabama 1975*, Section 41-16-72 states, "Attorneys retained by any state purchasing entity to render nonlitigation legal services shall be selected by such entity from a listing of attorneys maintained by the Legal Advisor to the Governor." This was not done. Further, the *Code of Alabama 1975*, Section 29-2-41.2(b) states, "Notwithstanding any other provisions of this article, all contracts for employment of an attorney to provide legal services, including contracts involving an attorney providing legal services under an agreement with the Attorney General, shall be reviewed by the [Contract Review Permanent Legislative Oversight] committee." This was not done.

The board provided a properly approved and reviewed contract for one of the attorneys; however, the contract had long since expired. The *Code of Alabama 1975*, Section 41-16-72(3) addresses professional services other than from attorneys and states that, "Notice of need for professional services shall be widely disseminated to the professional community in a full and open manner. Procuring state entities shall evaluate such professionals that respond to the notice of need based on such state entity's qualification-based selection process criteria. Any such procuring state entity shall then make a good faith effort to negotiate a contract for professional services from the selected professional after first discussing and refining the scope of services for the project with such professional." This was not done. The board did not solicit and evaluate proposals from more than one entity.

- I. Not all of the board's administrative rules show an author. The *Code of Alabama 1975*, Section 41-22-6 (a) requires that "...Each rule or regulation promulgated, whether the original or a revision, and all copies thereof, shall have the name or names of the author or authors, respectively, on its face."
- J. The board's administrative rules provided to licensees and posted on the board's Internet website are not current.

Two of the board's rules (730-X-3-.02 and 730-X-3-.04) have an incorrect office address, 5220 Meadow Brook Road, Birmingham. The current address is 311 Saint Charles Street, Homewood.

Rule 730-X-1-.06 (1) (g) states, "prescribe the form and content of the oral examination required by law, govern the conduct of such examination and set the standards of said oral examination." The statute provided as the authority for this rule is Section 34-24-255. There is no mention of oral examination in any of the board's current enabling statutes. The *Code of Alabama 1975*, Section 34-24-255 (a) requires that "... the standard examination shall test the knowledge of the applicant of the Podiatry Practice Act and the Rules and Regulations of the board."

- K. The board had not filed annual reports with the Governor, the State Auditor, the Secretary of State, and the Department of Archives and History, as required by law. The administrative assistant provided copies of the reports, but none were on file at the offices of any of the named recipients. The *Code of Alabama 1975*, Section 34-24-252 (9) requires the board, "To annually, on or before January 1, make a report to the Governor of Alabama of all its official acts during the preceding year, of its receipts and disbursements, a full and complete report of the condition of podiatry and the practice in this state, and to file duplicate copies of the report with the Secretary of State, the State Auditor, and the Alabama Department of Archives and History."

## **STATUS OF PRIOR FINDINGS**

**The following deficiencies were previously reported and continue to occur.**

- A. Annual earnings of the board's administrative assistant, attorney and investigator were not reported as required by federal regulations.** The board's administrative assistant, attorney and investigator are employed without contract. Income earned in each calendar year is required to be reported to the person providing services as well as to the Internal Revenue Service on a form 1099 Misc. Forms 1099 Misc were not prepared and provided by the board for the 1996, 1997, 1998, 1999, 2000 and 2001 calendar years. The administrative assistant's 1099s were on record for 2002 and 2003. Title 26, Subtitle F, Chapter 62, Subchapter A, Part III, Subpart B, Section 6041 of the Code of Federal Regulations requires this action. By not reporting the information as required, the board may be liable for federal penalties for the years in question. Beginning in April of 2004

(during this review), the Administrative Assistant has been treated as an employee for federal purposes, and taxes are being withheld from her paycheck.

- B. FICA and Social Security taxes were not withheld from board member compensation. Board member compensation was not reported on Form W-2.** Board members are paid \$250 for each meeting day, plus the same travel allowances received by state employees. FICA and social security taxes were not withheld from the \$250/day compensation, and W-2 forms were not prepared for board members for the past three compliance audits covering the period 1997-2003. According to a memorandum dated August 4, 1997 from Robert L. Childree, State Comptroller, the Internal Revenue Service Code, Section 3401(c)-1 includes elected and appointed officials in its definition of employees of a governmental entity. Appointed officials include all members of boards and commissions as established by state law. The Social Security Administration has ruled that social security coverage is mandatory for all elected and appointed officials who are not covered by a qualified public retirement system or are not excluded by a Section 218 agreement. Any payments to elected or appointed officials such as fees, compensation or per diem amounts made without substantiation to justify as business or travel expenses will be treated as wages and therefore are subject to federal and social security withholding taxes.

The board owes the employer's share of federal withholding tax and social security tax on compensation paid, if such tax has not been paid by the individual board members. In addition, interest and penalties could be assessed on the amount of tax not paid.

- C. Incorrect application of travel law continues.** The past three legal compliance examinations by the Examiners of Public Accounts contained findings of improper application of state law providing for travel expense reimbursement, which resulted in overpayments and underpayments to members of the board. These discrepancies were corrected as a result of the examinations. However, the discrepancies continue to be created.

All in-state travel claims submitted during the period 10/1/2001 through 9/30/2003 (four) were calculated and paid incorrectly, causing underpayments of \$16.05 plus the improper payment of Ms. Clark's actual expenses for a hotel stay during a board meeting.

- D. The Board continues to pay out-of-state travel claims without signed authorization from the Governor.** Three of four out-of-state travel claims submitted by the administrative assistant and board members were not authorized in writing by the governor, which is required by law.

The *Code of Alabama 1975*, Section 36-7-21, states, "Persons traveling in the service of the state or any of its departments, institutions, boards, bureaus, commissions, councils, committees, or other agencies, outside the State of Alabama shall be allowed all of their actual and necessary expenses in addition to the actual expenses for transportation. **The travel shall first be fully authorized in writing by the Governor.**"

- E. Discrepancies in the accuracy and completeness of records were found in the previous examination and continued in the current examination.**

- Deposit tickets contained math errors which required correction by the bank. This condition was found in the previous examination,
- Bank statements were not formally reconciled to the check register, resulting in long-term unresolved errors. During the period of the previous examination, a \$1,000 reduction in balance due to bank error had not been pursued and resolved. The error was finally resolved during the previous examination, and a refund was obtained. This type of condition continued into the current examination. The board incurred insufficient funds fees on four checks because the board's administrative assistant did not reconcile the board's checking account to the board's check register. The insufficient funds notices from the bank were not retained in the board's records. The administrative assistant made a \$1,000 deposit of personal funds on September 5, 2003 to cover the bank charges and outstanding checks until additional deposits could be made. She was reimbursed the loaned \$1,000 on September 18, 2003. Upon notification, the administrative assistant reimbursed the board for the insufficient funds bank charges. Also, the board was charged a fee for purchase of checks of \$73.38 during January 2002. The checks were returned because they were of the incorrect type, but the check fee was not reimbursed to the account by the bank. Follow up of this error and recovery of the fee to the board was not accomplished until March 2003.
- There were no books of account in which to record financial transactions. Financial transactions were recorded on check stubs and during the previous examination and were frequently inconsistent and difficult to decipher. This condition continued in the current examination.
- Disbursements were often supported with incomplete documentation or were not supported by any documentation. The current examination revealed that seventy-four of 129 disbursements were not supported with documentation sufficient to account for the propriety of the disbursements. For example, out of state travel expenses were not properly itemized. Out of state travel records lacked the required approval of the governor. Telephone bill details had been shredded. Not all invoices were itemized. The board had a policy in effect to require written approval of travel claims by the board's chair before payment. Three travel expense claims were not accompanied by written approval of the chair. There were thirty-six payments for which there was no documentation. The executive assistant stated that she did not keep all of the documentation due to lack of space.
- The previous examination revealed that some cancelled checks and bank statements were missing and had to be requested from the bank to complete the examination. This condition continued in the current examination.
- The previous examination revealed that individual fees received from licensees were not consistently recorded in the receipt schedule or in the licensees' files. This condition continued in the current examination.

**F. In the previous examination, minutes of board meetings held September 22-23, 2000, January 19, 2001, and September 21-22, 2001 were not signed, thereby reducing their**

**credibility as records of the official actions of the board.** During this examination, minutes of board meetings held October 4-5, 2002 and October 3-4, 2003 were signed only by the board's chairman. To comply with the State Records Commission's procedural leaflet Guidelines for Taking Formal Minutes, the name and signature of the person taking the minutes should be placed upon the minutes in addition to the signature of the presiding official applied at the next meeting when the minutes are approved. In addition, the minutes did not reflect the board's action to increase the salary of the administrative assistant.

**G. The following types of discrepancies were found concerning nonconsumable personal property in the previous compliance examination and were again found in the current examination.**

- The previous examination revealed that the board did not provide complete information to the Property Inventory Control Division of the State Auditor's Office, resulting in inaccurate and incomplete records. The current examination revealed that the board's property records continued to contain inaccuracies that include incorrect cost, incorrect serial number, incorrect purchase date, and incorrect location and/or custodial agent for six of the board's ten inventoriable items.

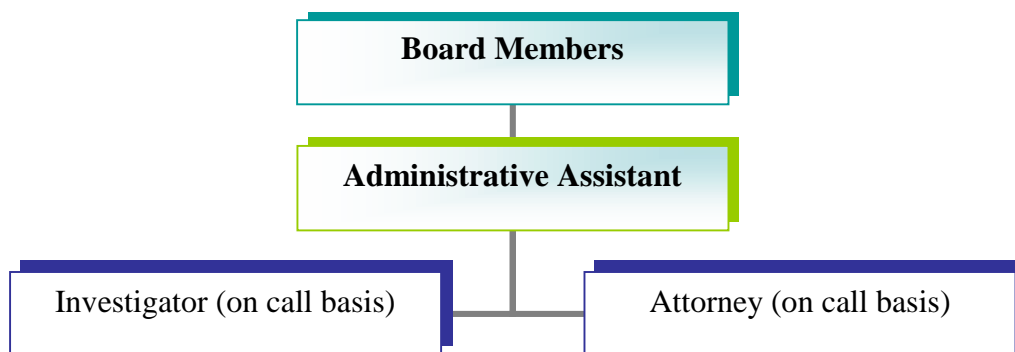
The *Code of Alabama 1975*, Section 36-16-8(1) requires that the board's equipment inventory show "the complete description, manufacturer's serial number, cost price, date of purchase, location, and custodial agency, responsible officer, or employee, and the state property control marking." In addition, the board purchased parallel, USB ports, and a 250 sheet drawer & feeder for existing office equipment without adding the cost to the existing office equipment records. Further, the setup charges for a monitor, printer, and scanner were also not included in the recorded cost of property items.

The State Auditor's Property Manual requires in Section V. Miscellaneous Procedures J. 1. "If an item or feature is/will be permanently installed in/on a major piece of equipment, a state property number will not be assigned. Instead the agency and State Auditors' property record of the major item will be updated to reflect the additional cost and description." The Property Manual Section A. 1 states that, "The cost of a property item shall be the carrying cost promulgated by Generally Accepted Accounting Procedures (State Auditor Policy Statement A104): the original purchase price to include all components plus any incoming freight charges, plus any installation or setup costs, plus improvements/enhancements (not repairs), minus the salvage value of components removed."

- The previous examination revealed that the board improperly disposed of six items of state equipment. The current examination revealed that a former board member maintained custody of and discarded a laptop computer deemed unusable. Consequently, equipment was again disposed of without following the procedures prescribed by law for disposition of state equipment. In addition, the board advised three former board members to keep three other laptop computers purchased with

board funds. The *Code of Alabama 1975*, Section 36-16-8 requires in (3) No property...shall be disposed of, transferred, assigned, or entrusted to any other department, agency, or employee thereof without written permission of the Director of the Alabama Department of Economic and Community Affairs or the Governor of the State of Alabama or the designee of either of them.” In addition, Section 93 of the *Constitution of Alabama 1901* operates to prohibit the transfer of equipment purchased with public funds to private individuals, unless a public purpose is served. There is no apparent public purpose served by allowing former board members to keep state equipment.

## **ORGANIZATION**





## **PERSONNEL**

The Board of Podiatry employs one person (white female) to act as the board's administrative assistant. There is no written contract for these services. Compensation for the administrative assistant is \$28,800 annually, paid at the rate of \$2,400 per month salary, plus educational and travel expenses. The administrative assistant maintains the board's records and carries out the board's administrative operations from her home. The board pays for equipment and supplies and other expenses of operation. The board is authorized by the *Code of Alabama 1975*, Section 34-24-252, to hire without regard to the merit system. In addition, the board utilizes the services of an investigator (white male) without contract to perform inspections of controlled substance registrants and to investigate complaints. The board also utilizes the services of an attorney (white male) without contract to perform legal services.

## **PERFORMANCE CHARACTERISTICS**

**Number of Licensees per Employee – 154**

**Total Expenditure per Licensee (2003 fiscal Year)** - \$ 359.99

**Number of Persons per Licensee in Alabama and Surrounding States**

	<u>Population (Estimate)</u>	<u>Number of Licensees</u>	<u>Persons Per Licensee</u>
<b><i>Alabama</i></b>	<b><i>4,500,752</i></b>	<b><i>154</i></b>	<b><i>29,226</i></b>
Florida	17,019,068	1,743	9,764
Georgia	8,684,715	650	13,361
Mississippi	2,881,281	80	36,016
Tennessee	5,841,748	220	26,553

**Comparison of Scope of Practice with Other States**

<b>State</b>	<b>Scope of Practice</b>	<b>Type of License &amp; Fee</b>
<b>AL</b>	The diagnosis and medical, surgical, mechanical, manipulative, or electrical treatment of any ailment of the human foot up to the ankle-joint, except the amputation of the foot or the administering of an anesthetic other than local.	<b>Podiatric: \$250</b>  <b>Controlled Substance Permit \$20</b>

<b>FL</b>	<p>The diagnosis or medical, surgical, palliative, and mechanical treatment of ailments of the human foot and leg. The surgical treatment of ailments of the human foot and leg shall be limited anatomically to that part below the anterior tibial tubercle. The practice of podiatric medicine shall include the amputation of the toes or other parts of the foot but shall not include the amputation of the foot or leg in its entirety. A podiatric physician may prescribe drugs that relate specifically to the scope of practice authorized herein. The board licenses the following: Certified podiatric X-ray assistant-a person who is employed by and under the direct supervision of a licensed podiatric physician to perform only those radiographic functions that are within the scope of practice of a licensed podiatric physician. For purposes of this subsection, the term "direct supervision" means supervision whereby a podiatric physician orders the X ray, remains on the premises while the X ray is being performed and exposed, and approves the work performed before dismissal of the patient; Podiatric physician-any person licensed to practice podiatric medicine; and limited podiatric physician-those persons holding valid certificates on October 1, 1991, who were certified pursuant to chapters 88-205 and 88-392, Laws of Florida, and who have been practicing under a board-approved protocol for at least 2 years are eligible to receive a license to practice podiatric medicine without supervision under their present limited scope of practice of the nonsurgical treatment of corns, calluses, and ingrown toenails in a specially designated area of need as provided by rule of the board.</p>	<p><b>Podiatric Physician:</b> Initial: \$250 biennially Renewal: \$350 Controlled Substance Permit: \$100</p> <p><b>Limited Podiatric Physician:</b> Initial \$250 Renewal: \$155</p> <p><b>X-ray Podiatric Assistant:</b> Initial: \$75 Renewal: \$80</p>
<b>GA</b>	<p>The diagnosis and treatment of diseases, ailments, injuries, or abnormal conditions of the human foot and leg through primary medical care, surgical or other means. Surgery shall include performing amputations of the toe or performing amputations distal to and including the tarsometatarsal joint but only when performed in a facility permitted and regulated as a hospital or ambulatory surgical treatment center.</p>	<p><b>Podiatric Physician:</b> Initial &amp; Renewal: \$150</p>
<b>MS</b>	<p>The practice of podiatric medicine is that profession concerned with the prevention, diagnosis and treatment of conditions of the human foot. "Foot" means that part of the human anatomy which consists of the tarsal bones, metatarsal bones, phalanges and all supportive and/or connective tissue immediately adjacent thereto, not to extend past the proximal end of the talus; this definition does not include the ankle or any structures proximal to it.</p>	<p><b>Podiatric Physician:</b> Initial &amp; Renewal: \$500</p>

TN	<p>A <b>podiatrist</b> may perform any examination or diagnosis and treatment of the foot using medical, mechanical or surgical techniques, including the use and prescription of drugs, and excluding the administration of anesthesia other than local and the amputation of the foot. The foot does include the ankle. The <i><b>Code of Tennessee</b></i>, Section 63-1-101 (a) states that, “Within this chapter, "podiatrist" means one who examines, diagnoses, or treats medically, mechanically, or surgically, the ailments of the human foot, ankle and soft tissue structures extending no higher than the distal tibial metaphyseal flair, including the use and prescribing of drugs and medications, but excluding the direct applications of general anesthesia by a podiatrist and the amputation of the foot. A podiatrist may perform Achilles tendon repair, subject to the provisions of subsection (b), but may not perform surgery on Pilon fractures or tibial fractures which do not enter the ankle joint.” <b>X-ray operators</b> are persons who applies x-rays to human beings for diagnostic purposes in a podiatrist’s office in Tennessee and must be certified by the Board of Registration in Podiatry. (a) Only those individuals that are qualified by training and experience may obtain a certificate to practice as x-ray operators in a podiatrist’s office and must do so under the supervision of a duly licensed podiatrist.</p>	<p><b>Podiatric Physician:</b> Initial: \$450 Renewal: \$450 biennially</p> <p><b>X-ray Operator:</b> Initial: \$60 Renewal: \$40 biennially</p>
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### Notification to Licensees of Board Decisions to Amend Administrative Rules

The board follows the requirements for notification of changes to administrative rules in the Administrative Procedure Act. The board advertises rule changes in the Administrative Monthly and holds a public hearing. No further notice is provided to licensees on a routine basis.

### Complaint Resolution

The board’s administrative rules found in Section 730-X-4 provide the procedures for documentation, receipt, and investigation of complaints relating to board licensees’ and illegal practices. From the 2000 fiscal year to present (02/26/04), the board responded to seven consumer complaints.

			<b>Resolved</b>	<b>In Year</b>			
<b>Compliant Received</b>	<b>Fiscal Year</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>On Going</b>	<b>Resolution Time</b>
1	<b>2000</b>	0	1	0	0	0	5 months
0	<b>2001</b>	0	0	0	0	0	
3	<b>2002</b>	0	0	2	1	0	2, 16 and 17 months
1	<b>2003</b>	0	0	0	0	1	
2	<b>2004</b>	0	0	0	0	2	

<b>Disposition of Complaints</b>	
<b>Resolution</b>	<b>Number</b>
Dismissed, No Cause	1
In Progress	3
Closed, Cause	3

### **Complaint Processing**

Complaints originate from either consumers or from the board, based on information received. Complaints are processed through four stages as detailed below:

<b>Initial Documentation</b>	Complaints are generally received by telephone and followed up by a letter from the complainant. The complainant is asked to provide facts concerning their complaint and is told that an investigator may call on them for additional information. The complainant is encouraged to supply all pertinent records, or obtain them from the podiatrist in question.
<b>Investigation</b>	<ul style="list-style-type: none"> <li>• If the letter from the complainant indicates a practice act violation, the investigator collects data.</li> <li>• The investigator works with the board's attorney and administrative assistant. If necessary, the Vice President of the board may be asked for assistance prior to the investigation.</li> <li>• At the conclusion of the investigation, a report is written and submitted to the attorney who determines if the complaint has merit and decides how next to proceed.</li> </ul>
<b>Disposition of complaint if a formal hearing is not held</b>	Informal dispositions usually involve complaints about advertising violations, which are generally resolved by a consent agreements and administrative fines.

<b>Resolution</b>	<ul style="list-style-type: none"> <li>• If no probable cause exists, the complaint is closed and all parties are notified. In addition, depending on the nature of the problem (such as complaints involving excessive billing or personality situations), the complainant may be advised to forward the information to other appropriate authorities, such as the Alabama Podiatric Medical Association's Peer Review Committee.</li> <li>• The president of the board, or in his absence, the vice president of the board, or in his absence, the secretary-treasurer of the board, presides during hearings but may rely upon the assistance and advice of a hearing officer. A quorum of the board necessary to decide contested cases is set at five (5) members. In all instances in which a complaint has been filed with the board, one member of the board must be appointed the investigating officer. This board member shall assist in the investigation of the case, and if necessary, the prosecution of the case, and cannot vote at the hearing.</li> <li>• An administrative fine of up to \$1,000 may be levied.</li> </ul>
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## **FINANCIAL**

### **Fee Schedule**

Three fees are set by the board in its administrative rules, as authorized by the *Code of Alabama 1975*, Section 34-24-255. The annual license fee, while not set by rule, was set by action of the board. The amount was voted by the board on June 8, 1990. A late penalty is authorized and set by Section 34-24-275. A special certificate fee is set by the *Code of Alabama 1975*, Section 34-24-272. The administrative fine is authorized and capped by the *Code of Alabama 1975*, Section 34-24-252. Related to controlled substances, the *Code of Alabama 1975*, Section 20-2-50 provides that "The certifying boards shall promulgate rules and charge reasonable fees to defray expenses incurred in registration and administration of the provisions of this article in regard to the manufacture, dispensing or distribution of controlled substances within the state." "The fees collected to defray expenses shall be retained by the certifying boards."

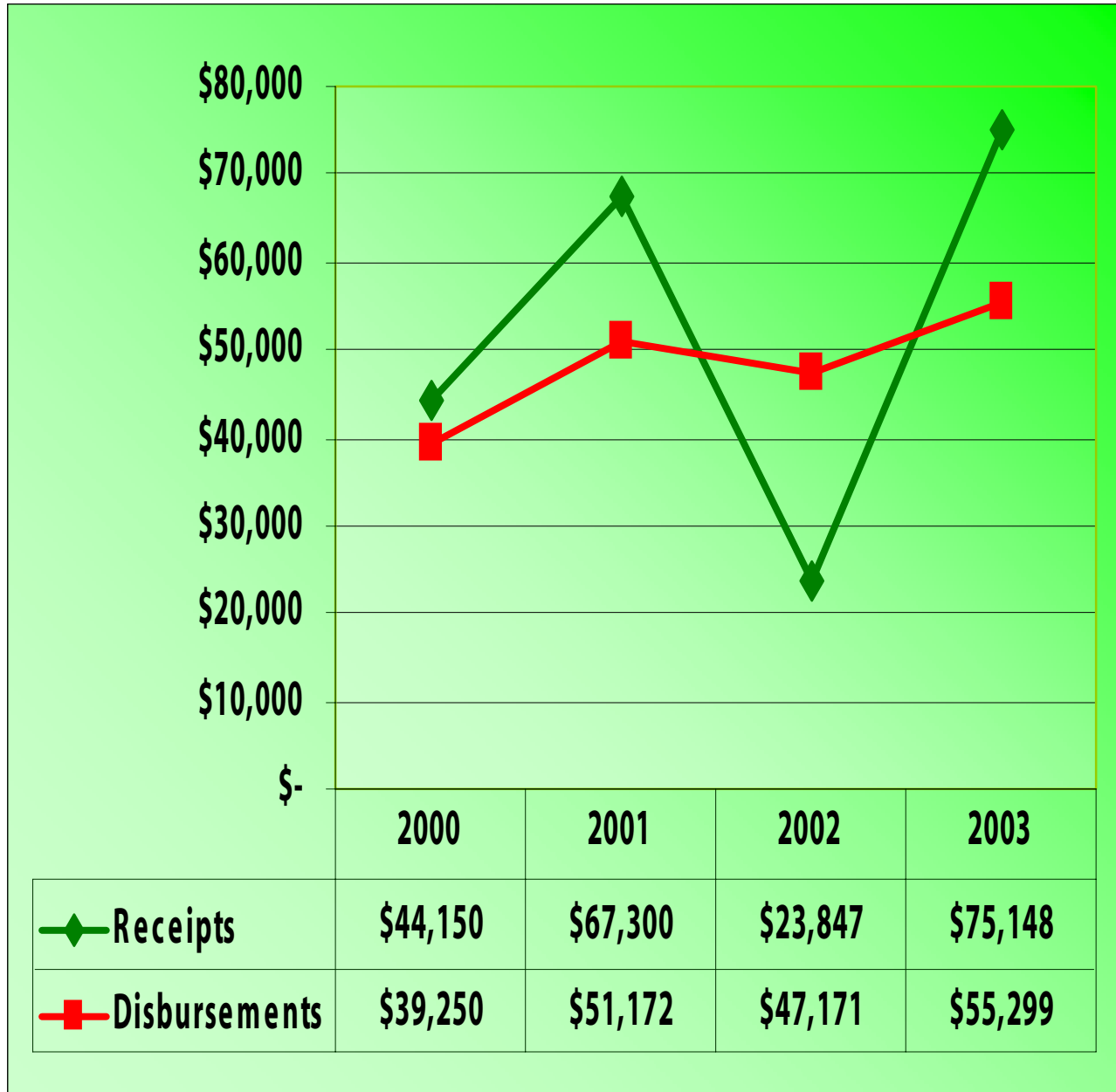
<b>Description</b>	<b>Amount</b>	<b>Authority</b>	<b>Rule</b>
Annual License Fee to be set by the board	\$250	34-24-255 (b)	Set per board meeting minutes of June 8, 1990
Application Fee not to exceed \$200	\$100	34-24-255 (b)	730-X-3-.10
State Examination Fee not to exceed \$200	\$100	34-24-255 (b)	730-X-3-.10
Non-refundable re-examination fee	\$100	34-24-255(b)	N/A
Late penalty	\$300	34-24-275	730-X-3-.06
Special Certificate Fee	\$50	34-24-272	
Controlled Substance Renewal Fee	\$20	20-2-50	730-X-3-.08(4)
<b>Fines</b>			
Administrative fine per each violation not to exceed	\$1,000	34-24-252	N/A

**Schedule of Cash Receipts, Disbursements, and Balances**

**For the Period October 1, 1999 through September 30, 2003**

	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
<b><u>Receipts</u></b>				
In-State License Renewal Fees	\$ 68,000.00	\$ 20,250.00	\$ 56,300.00	\$ 30,250.00
Out-of-State License Renewal Fees				7,800.00
Late Renewal Penalty			600.00	300.00
Controlled Substance Permit Fees	5,100.00	1,480.00	4,200.00	2,840.00
Exam Application Fees	500.00	800.00	1,300.00	1,500.00
State Law Exam Fees	500.00	800.00	1,400.00	1,300.00
Administrative Fines			3,500.00	100.00
Miscellaneous	1,047.88	517.00		59.99
<b>Total</b>	<u>75,147.88</u>	<u>23,847.00</u>	<u>67,300.00</u>	<u>44,149.99</u>
<b><u>Disbursements</u></b>				
Personnel	28,900.00	33,400.00	3,782.00	3,000.00
Travel in State	401.15	531.73	1,371.55	718.28
Travel out of State	1,812.04	4,243.03	4,314.98	
Repairs and Maintenance			188.99	296.28
Rentals and Leases	407.12	317.84		273.61
Utilities and Communication	3,865.92	1,125.66	1,374.35	1,550.60
Professional Services	11,927.92	3,756.26	30,145.21	30,905.50
Supplies and Operating Expenses	4,519.83	1,239.26	1,204.69	1,736.53
Other Equipment Purchases	688.00		5,515.82	769.34
Miscellaneous	2,777.21	2,557.58	3,274.00	
<b>Total</b>	<u>55,299.19</u>	<u>47,171.36</u>	<u>51,171.59</u>	<u>39,250.14</u>
Excess (Deficiency) of Receipts over Disbursements	19,848.69	(23,324.36)	16,128.41	4,899.85
Cash Balance at Beginning of Year	<u>6,714.52</u>	<u>30,038.88</u>	<u>13,910.47</u>	<u>9,010.62</u>
<b>Cash Balance at End of Year</b>	<u>\$ 26,563.21</u>	<u>\$ 6,714.52</u>	<u>\$ 30,038.88</u>	<u>\$ 13,910.47</u>

**Operating Receipts Vs Operating Disbursements**  
**For the Period October 1, 1999 through September 30, 2003**



## **QUESTIONNAIRES**

### **Board Members**

Of seven members sent questionnaires, three replied.

#### **Question #1**

**What are the most significant issues currently facing the Alabama Board of Podiatry and how is the Alabama Board of Podiatry addressing these issues?**

1. 1) Doctor/patient trust violations; i.e. sexual harassment. 2) We will be trying to submit new rules and regs to legislatures to strengthen our position.
2. Self regulatory matters and board imposed fines.
3. 1) Sexual misconduct-which was addressed and acted. 2) Advertising violations. 3) Updating the rules and regulations of the State Board as it pertains to active podiatrists.

#### **Question #2**

**What changes to the Alabama Board of Podiatry laws are needed?**

1. Rules and regs that better define doctor/patient trust violations. The Podiatry Act does not deal with these issues specifically.
2. Enforcement of board fines and dispositions.
3. Allowing overall changes to the laws i.e. (Rules and Regs) so the board can better police its members and have more specific power to enforce the laws.

#### **Question #3**

**Is the Alabama Board of Podiatry adequately funded?**

1 Yes                      1 No                      1 Unknown      \_\_\_\_\_No Opinion

#### **Question #4**

**Is the Alabama Board of Podiatry adequately staffed?**

1 Yes                      1 No                      1 Unknown      \_\_\_\_\_No Opinion

#### **Question #5**

**What is the purpose of your fiscal year end balance of unobligated funds?**

1. To provide reserve for board hearings. These generally are very expensive.
2. Not aware of any.
3. I do not know this answer. I was not the treasurer and really don't have the answers to this question.



**Licensees**

Of 100 licensees sent questionnaires, 76 replied.

**Question #1**

**Do you think regulation of your profession by the Alabama Board of Podiatry is necessary to protect public welfare?**

68 Yes      3 No      3 Unknown      2 No Opinion

**Respondent 18:** Yes, but the board should not be as strict as it is in regulating self-promotion and podiatry and services offered.

**Question #2**

**Do you think any of the Alabama Board of Podiatry laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

34 Yes      39 No      3 Unknown             No Opinion

**Respondent 4:** Advertisement required disclaimer

**Respondent 8:** I am restricted in the scope of my practice. Although I have trained for 3 years in foot and ankle surgery, I am not able to treat the structures in the ankle.

**Respondent 11:** The restriction of not being able to treat the ankle.

**Respondent 14:** The inability of doing surgery on the Achilles tendon.

**Respondent 16:** I believe the scope of practice of podiatry should include treatment of the ankle. However, I do not think podiatry's limitation of practice is because of the board. I believe it is because of state laws and/or the AMA.

**Respondent 18:** Yes, Yes! The board restricts self-promotion and services offered by podiatrists in the state. The restrictions are too antiquated and old fashioned.

**Respondent 22:** Ad disclaimer

**Respondent 30:** Reporting whether you have a communicable blood borne disease (i.e. AIDS) to the board, so that they can pull your license and prevent you from making a living.

**Respondent 37:** The disclaimer

**Respondent 47:** Do not see the need for the following rule (pg 27 of rules and regulations) (730-X-5-.01): "Fraudulent or misleading advertising is that which does not contain the following disclaimer: "No representation is made about the quality of podiatric services to be performed or the expertise of the podiatrist performing services.'" Also, not all podiatrists have this in their ads.

**Respondent 57:** There is a law or regulation ... I am not sure if it is by the Board or a State law, that requires a certain disclaimer in advertisements such as display ads in the yellow pages that must be printed i.e. "No guarantee of services... This in my opinion is not required in other health professions and is prejudicial.

**Respondent 63:** We should have unrestricted treatment below the knee.

**Respondent 74:** Ankle treatment is not allowed at this time in the State of Alabama. 36 states allow podiatrists to work on the ankle and leg. This restriction in Alabama affects our ability to make a living. This restriction also is a deterrent to bring good podiatrists, new young podiatrists, “well trained” to the state. This in turn does not allow the patients for diverse care by providers that are better trained for foot and ankle care and that is a podiatrist.

**Respondent 75:** See attached regarding the practice Act governing podiatry in Alabama. (This response will be included in Question 8)

**Question #3**

**Do you think any of the Alabama Board of Podiatry requirements are irrelevant to the competent practice of your profession?**

12 Yes                      59 No                      5 Unknown                             No Opinion

**Respondent 14:** 3 letters of reference from Alabama Podiatrists (most are Alabama trained and don’t want any new better trained physicians operating in their city unless they are associates).

**Respondent 37:** refer to question 2

**Respondent 39:** Disclaimer in advertising

**Respondent 40:** Disclaimer on advertising is unnecessary

**Respondent 57:** Again, my “yes” applies to the question and answer from item #2 above. The need for this disclaimer is irrelevant to competent practice.

**Question #4**

**Are you adequately informed by the Alabama Board of Podiatry of changes to and interpretations of board positions, policies, rules and laws?**

51 Yes                      12 No                      9 Unknown                      4 No Opinion

**Question #5**

**Has the Alabama Board of Podiatry performed your licensing and renewal in a timely manner?**

75 Yes                      1 No                             No Opinion

**Question #6**

**Do you consider mandatory continuing education necessary for competent practice?**

69 Yes      7 No      Unknown      No Opinion

**Respondent 14:** Need to increase CME from 12 to 20.

**Respondent 46:** Absolutely!!!

**Question #7**

**Has the Alabama Board of Podiatry approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?**

67 Yes      4 No      4 Unknown      1 No Opinion

**Respondent 11:** Usually they are only aware of Alabama courses and sometimes you cannot attend-they should make us aware of surrounding state's meetings, etc.

**Respondent 14:** I recommend they offer transportation to Florida's SAM seminar in Orlando or get more speakers from Georgia's North Lake Residency Program.

**Respondent 26:** You are allowed to request approval of any program from the board.

**Respondent 27:** In the past years, topics were not diverse per year.

**Question #8**

**What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Alabama Board of Podiatry doing to address the issue(s)?**

1. Not being recognized by state as primary care providers.
2. Podiatrists being defined as a "physician". Current efforts underway to lobby for the definition and inclusion in the medical liability act.
3. No comment.
4. Scope of practice
5. No comment.
6. No comment.
7. No comment.
8. See #2. The restriction of my ability to treat patients in all the areas of my expertise. I have expertise not offered by other medical specialties, which I can not offer to the public. To my knowledge, it is beyond the control of the board to do anything.
9. Malpractice costs, student loan payments. I have no idea.
10. No comment.
11. Adults not being covered under Medicaid and not being able to treat ankles.
12. Need for Board certification by all podiatrists in surgery. I have no idea what the board has done!
13. No comment.

14. Increasing the scope of practice to include the ankle. Nothing-lobbyists are worthless. Trained young podiatrists would make a better case in the media and the capitol.
15. Podiatry as a physician-supporting PPAC.
16. I believe our profession should be allowed to treat ankles. I also believe Medicaid should reimburse for the treatment of Medicaid patients that are over 18 years old. Because I have just begun to practice, I am unaware of what the board is doing to address these issues.
17. A) Podiatrists need to be defined as physicians. B) Podiatrists need to be covered by the Alabama Malpractice laws that cover MDs and osteopaths and dentists.
18. State board should allow a much wider latitude in permissible advertising and promotion (direct mail, yellow pages, services offered, etc.)
19. No comment
20. Expansion of scope of practice to include the ankle – I don't think the board is investigating.
21. No comment
22. The legal determination of "physician" to include DPMs. Progress is slow due to opposition and politics.
23. ?
24. Ability to attain hospital privileges. Nothing that I know of.
25. We need to be defined as physicians. They are helping with legislative efforts.
26. No comment
27. Definition of the profession. Medicare and Medicaid
28. We need to be defined as "Physicians" by the State of Alabama. Our scope of practice should include the "ankle" as we are trained to treat the "foot and ankle".
29. Malpractice issues, includes 1) complete physicians status (as is indicated by Medicare definition) 2) statute limitations and other laws equivalent to MDs, surgeons...Unknown. Issues discussed at Podiatry Association meetings.
30. 1) Not being recognized as physicians, just podiatrist. 2) Refusal of payment by Medicaid.
31. Classification of our profession in the state legislature. This restriction of not classifying us as physicians is discrimination outright.
32. Reduction of fees by insurance companies and an increase in malpractice fees. Alabama board is working with the National Association. Need to limit unnecessary malpractice suits.
33. Scope of practice
34. Inclusion in medical practice acts and reduction of discrimination in regards to this. I believe the board is trying but cannot be viable as a board without acceptance into the medical realm.
35. Insurance reimbursement by third party payers (i.e. B/C, Medicare, and Medicaid). The board does nothing to improve our relationships.
36. Status of DPM's as physicians-lobbying in congress
37. Podiatrists not being included as "physicians" in what I think is the "Professional medical Liability Act."
38. No comment
39. MCR payment
40. No comment
41. A cap on medical liability
42. No comment

43. Continuing education. Think the board is doing an adequate job.
44. Allowing podiatrist in hospital board. Don't know.
45. We should be entitled to privileges with Medicaid. The board is addressing.
46. Designation as physician and anti-discrimination language and all insurance carriers.
47. A) Equal access to health plans for all qualified doctors. B) action unknown
48. No comment
49. Significant issue: Tort reform. Board action: 0
50. Current scope of practice (barefoot primarily) being allowed in all facilities within the state. Some hospitals severely limit our scope of practice. I don't know what, if anything, that the board is doing. It perpetuates a culture of inferiority as it relates to the profession. I am new to the state, so these limits on my practice utterly shock me.
51. Limited scope of practice to foot and not including foot and ankle. Many podiatrists are trained in foot and ankle.
52. We need to update our laws regarding the definition of a Podiatrist as a physician that will enable access to hospital medical staff privileges and broaden the scope of practice of Podiatric Medicine bringing our state in line with the rest of the country. Only in this manner will the State of Alabama attract high quality Podiatric physicians and heighten the care provided in to the residents of Alabama. I do not know if the Alabama Board of Podiatry is the appropriate avenue to suggest these changes although periodic updates or re-write of the Medical Practice Acts should occur.
53. No comment
54. Unknown
55. No comment
56. No comment
57. I am not sure as I am an out of state license holder. Other than I have had a poor outcome from the lead director of the Alabama State Podiatry Association, a female (indiscernible), who has failed to mail me a CME certificate from last February 2003, Alabama meeting.
58. No comment.
59. Hospital surgical privileges
60. 1) Staff privileges at hospital and State centers. 2) I don't know
61. Adding ankle to be included in scope of practice of podiatry.
62. No comment
63. Achilles tendon-privileges should be more liberal
64. Ankle privileges. Going through legislature for approval.
65. Not sure.
66. Having the classification of physician as were are in Medicare and in other states. Bills are introduced and politicians either for personal reasons hold up the bill or because of lobbyists representing competitors will encourage politicians who receive money from the competition not to support the bill.
67. Enforcing rules and regulations with such an increase in the number of licensees over the past few years.
68. We are not included in the Medicare program.
69. Podiatrist must be included in the state definition of "physician" as they are included by the Federal Government. The State definition should.
70. 1) To be accepted by Medicaid. 2) Scope of practice, i.e., ankle and leg. I am unaware of any actions being taken.

71. Physician status, hospital privileges.
72. No comment
73. No opinion. I do not practice in Alabama to be able to form a fair assessment at this time.
74. To be included in the Medical Liability Act. This is political and the Board can do nothing about it. Including the foot and ankle in scope of practice. Again, this is political. It appears that Montgomery and the Trial Lawyers and the Orthopedic doctors are controlling the Board of Podiatry instead of the Board of Podiatry controlling itself.
75. As a practicing podiatrist in the State of Alabama, I certainly appreciate the opportunity to respond to the licensee questionnaire from the State Department of Examiners of Public Accounts. In addition to those items covered in the enclosed questionnaire, there is another item, that while not directly related to the function of the Alabama Board of Podiatry, it is most relevant to all of us who practice this profession within our state. That being, The Practice Act Governing Podiatry in Alabama. The scope of podiatry is limited by definition under Paragraph 34-24-230, "the diagnosis and treatment of disorders of the human foot," as described herein. Further in this same paragraph, the human foot is described in detail to exclude the distal tibia and distal fibula, as well as their articulations with the talus, and further on, again alludes to "the distal aspect of the tibia and fibula, the Achilles tendon, and all structures above the dome of the talus reside within the leg." For over twenty-five years, podiatrists in the State of Alabama have practiced under this definition, which compared to the national standard for our profession, as well as the standard in neighboring states such as Georgia, Florida, and Tennessee is quite antiquated, and does not represent the standard of care to which the majority of podiatric physicians around the country have achieved. Our national associations, the American Podiatric Medical Association, The American Board of Podiatric Surgery and the American College of Foot and Ankle Surgeons have for years recognized the definition of a podiatric physician to include the foot and ankle. As a practitioner that has had the privilege of serving on the Alabama Board of Podiatry during my twenty-six years in practice, addressing this portion of the practice act for podiatry would be beneficial to the health care of the citizens of Alabama, as well as those who practice podiatric medicine and surgery.
76. Limited scope of practice to below ankle joint

**Question #9**

**Do you think the Alabama Board of Podiatry and its staff are satisfactorily performing their duties?**

58 Yes                  6 No                  10 Unknown    2 No Opinion

**Respondent 15:** [redacted] [administrative assistant] is rude and lazy.

**Respondent 18:** State board should pursue permissible promotion and advertising options; they are too strict and antiquated. Scope should be broadened and extended.

**Respondent 20:** On the whole yes – but I would like to see an increase in the scope of practice.

**Respondent 30:** I've been in practice here since 1994. [redacted] [administrative assistant] has been rude and uncooperative the entire time I have been a podiatrist in this state. She

does not present a good image for the state organization. She acts as if she is doing you a favor for doing her job that she is being paid to do.

**Respondent 39:** President offered to help with coding at last year's conference but was never available to help when we tried to call him.

**Respondent 57:** [REDACTED] [administrative assistant] has done a great job throughout the years.

**Question #10**

**Has any member of the Alabama Board of Podiatry or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?**

1 Yes

73 No

1 Unknown

1 No Opinion

**Respondent 14:** They are very ethical.

**Respondent 16:** I would add that [REDACTED] [administrative assistant] has always been extremely helpful to accommodate me and my peers.

**Respondent 20:** Except license fee!

**Respondent 29:** In 20 years practice

**Respondent 36:** Only for dues

**Complainants**

Of seven complainants sent questionnaires, three replied

**Question #1**

**Was your complaint filed with the Alabama Board of Podiatry by:**

\_\_\_\_\_ Mail \_\_\_\_\_ 3 Phone \_\_\_\_\_ Fax \_\_\_\_\_ Other \_\_\_\_\_ Unknown

**Question #2**

**Was receipt of your complaint promptly acknowledged.**

2 Yes                      1 No                      \_\_\_\_\_ Unknown

If yes, approximately how long after you filed your complaint were you contacted by the Alabama Board of Podiatry?

1 Immediately    2 Within 10 days                      Within 20 days                      Within 30 days  
\_\_\_\_\_ More than 30 days                      \_\_\_\_\_ Did not respond                      \_\_\_\_\_ Unknown

**Respondent 1:** They told me to call the Pharmacy Board.

**Question #3**

**Was the employee who responded to your complaint knowledgeable and courteous?**

\_\_\_\_\_ Knowledgeable                      \_\_\_\_\_ Courteous    2 Both    1 Neither                      \_\_\_\_\_ Unknown

**Question # 4**

**Did the Alabama Board of Podiatry communicate the results of investigating your complaint to you?**

\_\_\_\_\_ Yes                      3 No                      \_\_\_\_\_ Unknown

**Respondent 3:** I know that investigation is going on. Don't know any results (may not be final yet.



**Question # 5**

**Do you think the Alabama Board of Podiatry did everything it could to resolve your complaint?**

2 Yes      1 No                 Unknown

**Question # 6**

**Were you satisfied with your dealings with the Alabama Board of Podiatry?**

2 Yes      1 No                 Unknown



## **APPENDICES**

### **Statutory Authority**

#### **ARTICLE 6. PODIATRISTS.**

##### **§ 34-24-230. Definitions. [AL ST SEC 34-24-230]**

*Current through End of 2003 Organizational Session*

For purposes of this title, the following terms shall have the respective meanings ascribed by this section:

(1) Podiatry. The diagnosis and treatment of disorders of the human foot, as described herein.

(2) Practice of podiatry. The diagnosis and medical or surgical or mechanical or manipulative or electrical treatment of any ailment of the human foot except such definition does not include the amputation of the foot or the administering of an anesthetic other than local.

(3) Diagnosis. The process of ascertaining a disease or ailment by its general symptoms.

(4) Medical treatment. The application to or prescription for the foot of pads, adhesives, felt, plaster or any medicinal agency for both external and internal use in connection with treatment of local ailments of the human foot, except such definition does not include the medical treatment of any systemic disease, but does allow treating the local manifestations of those systemic diseases in the foot.

(5) Surgical treatment. The use of any cutting instrument to treat a disease, ailment or condition of the human foot as defined herein, except that a podiatrist shall not be authorized to amputate the human foot, or perform any surgery on the human body at or above the ankle joint, or administer anesthetics other than local anesthetics.

(6) Mechanical treatment. The application of any mechanical appliance made of steel, leather, felt or any material to the foot or in the shoe for the purpose of treating any disease, deformity or ailment.

(7) Manipulative treatment. The use of the hand or machinery in the operation or working upon the foot and its articulations.

(8) Electrical Treatment. Any treatment by means and methods supplied by electric current.

(9) Human foot. The terminal appendage of the lower extremity. It contains 26 bones and is divided into three parts -- the forefoot, the midfoot, and the hindfoot. The forefoot consists of 14 phalanges and five metatarsals. The midfoot consists of five tarsal bones and their articulations. The hindfoot consists of two tarsal bones, the calcaneus and the talus. The foot is defined as including all 26 complete boney structures below the ankle joint, which ankle joint consists of the distal tibia and fibula and their articulations with the talus. The distal aspect of the tibia and fibula, the achilles tendon, and all structures above the dome of the talus reside within the leg.

(Acts 1967, No. 741, p. 1586, § 1; Acts 1971, No. 2427, p. 3870, § 1; Acts 1975, No. 1199, p. 2376, § 1; Acts 1982, No. 82-437, p. 687, § 1; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1.)

**§ 34-24-231. False or misleading statements in advertisements. [AL ST SEC 34-24-231]**

*Current through End of 2003 Organizational Session*

It shall be unlawful for any person engaged in the practice of podiatry in this state to print or cause to be printed, or circulate or cause to be circulated, or publish or cause to be published, by any means whatsoever, any advertisement or circular in which appears any untruthful, impossible or improbable or misleading statement or statements, or anything calculated or intended to mislead or deceive the public.

(Acts 1967, No. 741, p. 1586, § 18.)

**§ 34-24-232. Grandfather clause. [AL ST SEC 34-24-232]**

*Current through End of 2003 Organizational Session*

Any person who has been engaged in the actual practice of podiatry in this state for at least three full years immediately prior to October 1, 1967, and is of good moral character, shall have 120 days from and after appointment of the first State Board of Podiatry in which to make declaration to the secretary-treasurer of said board, on a blank form to be furnished by said board, of his intention to continue the practice of podiatry in this state and his willingness to take such limited examination in podiatry as the said board may prescribe for the purpose of determining that he is qualified to practice podiatry without jeopardizing the public welfare. Any person serving in the military or naval forces of the United States who was engaged in the practice of podiatry in this state prior to his entering such service shall be considered as being engaged in the practice of podiatry during the time he is in such service. Those engaged in the practice of podiatry in this state as specified in this section who fail to make such declaration shall be deemed to have waived their right under the provisions of this section. Those referred to as privileged to make declaration to the secretary-treasurer of the said board of their intention to continue the practice of podiatry in this state may hereafter be referred to as declarants. Any person who holds a valid license to practice chiropody as provided under Act No. 140, Regular Session 1945, shall be eligible to become a declarant and shall be licensed to practice podiatry in this state, without examination, upon payment to the board of a registration fee of \$25.00, which license shall be subject to renewal as provided in this article.

(Acts 1967, No. 741, p. 1586, § 20.)

**§ 34-24-233. Exemptions. [AL ST SEC 34-24-233]**

*Current through End of 2003 Organizational Session*

Nothing in this article shall be construed as applying to physicians, surgeons or persons authorized to practice the healing arts as otherwise provided under the laws of the State of Alabama. No person who qualifies for a certificate of license under this article shall be subject to examination by the State Board of Medical Examiners.

(Acts 1967, No. 741, p. 1586, § 17; Acts 1975, No. 1199, p. 2376, § 6.)

**§ 34-24-234. Penalties for violations. [AL ST SEC 34-24-234]**

*Current through End of 2003 Organizational Session*

Whoever violates any of the provisions of this article wherein the doing of such act is

declared to be unlawful is guilty of a misdemeanor and on conviction shall be fined not less than \$100.00 nor more than \$1,000.00, or may be sentenced to hard labor for the county or imprisoned for not more than six months.  
(Acts 1967, No. 741, p. 1586, § 19.)

## ***DIVISION 2. BOARD OF PODIATRY.***

### **§ 34-24-250. Appointment; composition; qualifications of members; terms of office; removal of members; vacancies; one black member required. [AL ST SEC 34-24-250]**

*Current through End of 2003 Organizational Session*

(a) The Governor of Alabama shall appoint a State Board of Podiatry consisting of seven persons, each of whom shall be a citizen of the United States and of Alabama, over the age of 25, and shall have been engaged in the actual continuous practice of podiatry in the State of Alabama for at least five years next preceding his appointment. One member of said board shall be appointed each year, with the exception of three members being appointed every fifth year starting in 1979, for terms of five years and until their successors are appointed and qualified. No member of the board shall be reappointed for a successive term; previous board members will be eligible for nonsuccessive appointments. The Governor may remove from office at any time any member of the board for neglect of duty, incompetency, improper or unprofessional conduct or when the license or certificate of any member has been suspended or revoked. Vacancies on said board shall be filled by appointment by the Governor in the manner hereinbefore provided. The Governor shall furnish each member of said board at the time of his appointment a certificate of appointment, and said appointee shall qualify by taking the usual oath of office before the judge of probate of his home county within 15 days from the date of his appointment.

(b) After April 6, 1993, each vacant office occurring shall be first offered to each available black licensee until a black member is appointed to the board. When a black member is appointed to the board, thereafter appointments shall be made in such a manner as to ensure at least one black member on the board at all times.  
(Acts 1967, No. 741, p. 1586, § 3; Acts 1979, No. 79-601, p. 1065, § 1; Acts 1993, No. 93-156, p. 233, § 3.)

### **§ 34-24-251. Meetings; quorum. [AL ST SEC 34-24-251]**

*Current through End of 2003 Organizational Session*

The State Board of Podiatry shall hold an annual meeting at such time and place as it may designate for the examination of applicants for licenses or certificates and for the discharge of all such other business as may legally come before it, and may hold such additional meetings, on call of the president of said board, and the president shall call such meetings on petition of a majority of the members of said board, as may be necessary for the examination of the applicants for licenses or certificates, or for carrying into effect the provisions of this article; and at these meetings said board may transact any and all business that may legally come before it. The secretary-treasurer shall transact all ad interim business for said board unless otherwise specified in this article. A majority of the members of said board shall constitute a quorum for the transaction of business; and, should a quorum not be present on the day appointed for any

meeting, those present may adjourn from day to day until a quorum is present.  
(Acts 1967, No. 741, p. 1586, § 4; Acts 1989, No. 89-242, p. 342, § 3.)

**§ 34-24-252. Powers and duties generally. [AL ST SEC 34-24-252]**

*Current through End of 2003 Organizational Session*

The State Board of Podiatry shall be the certifying board for podiatrists and shall have the exclusive power and authority to certify and to issue, suspend, revoke, and reinstate all licenses or certificates authorizing the licensee to practice podiatry in the State of Alabama, and shall have the following authorities and shall perform the following duties:

(1) To promulgate any rules and regulations for its government as it may deem necessary and proper; and for purposes of disciplining its licensees, in addition to any other powers of the board, the board may adopt and collect administrative fines, not to exceed \$1,000 per violation, and may institute any legal proceedings necessary to effect compliance with this chapter.

(2) To provide a standard of efficiency as to the moral, educational, and experience qualifications and fitness for all persons who desire to practice podiatry in this state.

(3) To elect annually one of its members as president, one as vice-president, and one as secretary-treasurer, who shall hold their respective offices for one year and until their successors are elected and qualified. If a vacancy occurs in either of the three offices, a special meeting of the board shall be called for the purpose of filling the vacancy for the unexpired term.

(4) To administer any oaths and take any affidavits as are required by this article, certifying thereto under its hand and the seal of the board.

(5) To assist in the prosecution of violations of this article.

(6) To appoint or employ a legal adviser or counsel, when deemed necessary, whose compensation shall be fixed by the board and paid in the same manner as the per diem and expenses of the board are paid.

(7) To adopt a common seal to be affixed to its official documents.

(8) To keep a record of its proceedings, a register of persons licensed as podiatrists, and a register of licenses and certificates by it revoked.

(9) To annually, on or before January 1, make a report to the Governor of Alabama of all its official acts during the preceding year, of its receipts and disbursements, a full and complete report of the condition of podiatry and the practice in this state, and to file duplicate copies of the report with the Secretary of State, the State Auditor, and the Alabama Department of Archives and History.

(10) To employ, when deemed necessary and without regard to the state Merit System, and set the salary of, an executive secretary who shall serve at the pleasure of the board and shall administer board policy. The executive secretary may be a licensee or member of the board.

(Acts 1967, No. 741, p. 1586, § 5; Acts 1987, No. 87-588, p. 970, § 1; Acts 1989, No. 89-242, p. 342, § 3; Acts 1993, No. 93-156, p. 233, § 3.)

**§ 34-24-253. Compensation of members; disposition of funds realized from fees. [AL ST SEC 34-24-253]**

*Current through End of 2003 Organizational Session*

The members of the State Board of Podiatry shall each be entitled to receive the same per diem and travel allowance as is paid by law for state employees for each day actually employed in the discharge of their official duties, in addition to any daily compensation or allowance, if any, as may be provided by the board, in such amount as may be determined by the board out of the funds realized from the fees provided for in this article. Should the funds in the hands of the board at the end of any fiscal year be more than fifty thousand dollars (\$50,000), the excess of this amount shall be paid into the General Fund in the State Treasury.  
(Acts 1967, No. 741, p. 1586, § 6; Acts 1985, No. 85-359, p. 300, § 3; Acts 1989, No. 89-242, p. 342, § 3; Act 2001-253, p. 305, § 3.)

**§ 34-24-254. Salary and bond of secretary-treasurer. [AL ST SEC 34-24-254]**  
*Current through End of 2003 Organizational Session*

The secretary-treasurer of the State Board of Podiatry shall be paid such salary, in addition to per diem and his necessary expenses, as may be fixed by said board, which shall be payable solely from the funds of the board. Before assuming the duties of his office, he shall execute a bond payable to the State of Alabama, to be approved by the board, in the sum of \$10,000.00, conditioned upon the faithful discharge of the duties of his office; the premium for such bond shall be paid from the funds realized from the fees provided for in this article. Such bond, with the approval of the board and oath of office endorsed thereon, shall be filed with the Secretary of State and shall be kept in his office.  
(Acts 1967, No. 741, p. 1586, § 7; Acts 1989, No. 89-242, p. 342, § 3.)

**§ 34-24-255. Examinations -- Required; qualifications of applicant; application; scope; contents; issuance of license; fees. [AL ST SEC 34-24-255]**  
*Current through End of 2003 Organizational Session*

(a) Every person desiring to commence the practice of podiatry shall apply to the board and shall pay an application fee as established by the board. The applicant shall thereafter take and pass the standard examination provided in this article and fulfill the other requirements as herein provided. The applicant shall be 19 years of age or over, or the age as the board may by rule determine, of good moral character, shall be a graduate of a college of podiatry recognized by the American Podiatric Medical Association, shall have completed a podiatric residency approved by the American Podiatric Medical Association or by the State Board of Podiatry under its rules and regulations, shall have successfully passed all parts of the examination given by the National Board of Podiatric Examiners and shall be able to pass the standard examination prescribed by the State Board of Podiatry. The standard examination shall consist of tests in practical, theoretical, and physiological podiatry, in the anatomy and physiology of the human foot, and in pathology as applied to podiatry. In addition, the standard examination shall test the knowledge of the applicant of the Podiatry Practice Act and the rules and regulations of the board. The standard examination shall not be out of keeping with established teachings and adopted textbooks of recognized schools of podiatry. If the applicant satisfactorily passes the examination provided for he or she shall be issued a license to practice podiatry.

(b) The board may establish and collect an application fee and an examination fee from applicants for licensure, and a nonrefundable reexamination fee for a second or subsequent

examination.

(Acts 1967, No. 741, p. 1586, § 8; Acts 1975, No. 1199, p. 2376, § 2; Acts 1985, No. 85-359, p. 300, § 3; Acts 1987, No. 87-588, p. 970, § 1; Acts 1989, No. 89-242, p. 342, § 3; Acts 1997, No. 97-159, p. 216, § 3; Act 98-366, p. 665, § 1.)

**§ 34-24-256. Examinations -- Conduct. [AL ST SEC 34-24-256]**

*Current through End of 2003 Organizational Session*

The State Board of Podiatry shall on the day of the examination furnish each applicant with official blank paper, of uniform size, which size shall not vary but be kept uniform from year to year, and such official paper shall be paid for out of any funds received from fees paid by applicants. Before taking the examination, each applicant shall register his name and post office address, with such other facts as the board may require, and each applicant shall be given a number under which he shall be examined, which number shall be endorsed on the register, which must be kept securely by the secretary-treasurer of said board. Within 10 days after the grading of papers, each member of the board shall forward all papers graded by him to the secretary-treasurer.

(Acts 1967, No. 741, p. 1586, § 9; Acts 1989, No. 89-242, p. 342, § 3.)

**§ 34-24-257. Examinations -- Second or subsequent examination. [AL ST SEC 34-24-257]**

*Current through End of 2003 Organizational Session*

If any applicant fails to pass the standard examination, he shall, after six months and prior to 12 months from the date of said failure, be permitted to take a second or subsequent authorized examination upon the payment of an additional nonrefundable fee as determined by the board. Should he fail to pass the second examination, the fee which accompanied his original application shall be forfeited to the board, and he shall not be entitled to another examination without making a new application and paying the nonrefundable fee.

(Acts 1967, No. 741, p. 1586, § 10; Acts 1975, No. 1199, p. 2376, § 3; Acts 1985, No. 85-359, p. 300, § 3; Acts 1989, No. 89-242, p. 342, § 3.)

**§ 34-24-258. Deposit and expenditure of funds of the board; bonds of officers; ratification of actions of existing bank account. [AL ST SEC 34-24-258]**

*Current through End of 2003 Organizational Session*

(a) All funds received by the board shall be deposited to the credit of the board in a federally insured bank selected by the board, and the execution and enforcement of this article and the payments of salaries, expenses, and other authorized costs shall be paid by checks drawn by the secretary-treasurer and countersigned by the president or the administrative secretary of the board.

(b) The president, administrative secretary, and secretary-treasurer shall give such bonds as the board from time to time directs.

(c) Any actions relating to any bank account of the board existing prior to March 26, 1997 are ratified and confirmed.

(Acts 1997, No. 97-159, p. 216, § 4.)



### ***DIVISION 3. LICENSES.***

#### **§ 34-24-270. Practicing podiatry without license; penalty. [AL ST SEC 34-24-270]**

*Current through End of 2003 Organizational Session*

Any person who shall practice podiatry in this state or hold himself out to the public as a podiatrist, or who shall in any sign or advertisement use the word "podiatrist," "foot specialist," "foot correctionist," "foot expert" or "chiropodist" or any other term or terms or letters indicating that he is a podiatrist or that he practices or holds himself out as practicing podiatry or foot correction, without having at the time of so doing a valid certificate of qualification as provided in this article, shall be guilty of a misdemeanor and, upon conviction, shall be fined for each offense not less than \$50.00 nor more than \$500.00, and may be imprisoned for not less than one month nor more than three months. This article shall not prohibit the fitting, recommending, advertising, adjusting or the sale of corrective shoes, arch supports or similar mechanical appliances or patent or proprietary remedies by licensed retail drug or shoe dealers or manufacturers; but this exception shall not apply to the casting, molding or making of individual molded footwear or devices, unless the same is made upon the prescription of a licensed physician or licensed podiatrist.

(Acts 1967, No. 741, p. 1586, § 2.)

#### **§ 34-24-271. License to podiatrist coming to this state; fee. Repealed by Act 98-366, p. 665, § 2, effective July 1, 1998.**

#### **[AL ST SEC 34-24-271]**

*Current through End of 2003 Organizational Session*

#### **§ 34-24-272. Special certificate. [AL ST SEC 34-24-272]**

*Current through End of 2003 Organizational Session*

Any person who is a legal, ethical, and competent practitioner of podiatry in this state, who has been duly examined and licensed by the State Board of Podiatry, and of good moral character and known to the board as such, who shall desire to change his or her residence to another state or territory, or foreign country, shall, upon application to the board and the payment of a fee of fifty dollars (\$50), receive a special certificate over the signature of the president and secretary-treasurer of said board and bearing its seal which shall give the date upon which he or she was registered and licensed.

(Acts 1967, No. 741, p. 1586, § 12; Acts 1985, No. 85-359, p. 300, § 3; Act 98-366, p. 665, § 1.)

#### **§ 34-24-273. Issuance; contents; display by holder. [AL ST SEC 34-24-273]**

*Current through End of 2003 Organizational Session*

Every applicant who shall pass the standard examination, or whose reciprocity has been accepted by the State Board of Podiatry, shall receive from said board a license entitling him to practice podiatry in Alabama, which license shall be signed by the president of the board and countersigned by the secretary-treasurer of the board and have affixed thereto the seal of the board and be duly numbered and registered in the record book kept by the secretary-treasurer of said board, which said record book shall be open to public inspection, and a duly certified copy

of said record shall be received as evidence in all courts of this state in the trial of any case. Each person to whom a license has been issued shall keep said license conspicuously in his office or place of business and shall whenever required exhibit the license to any member or representative of the board.

(Acts 1967, No. 741, p. 1586, § 13.)

**§ 34-24-274. Recordation in probate office. Repealed by Acts 1989, No. 89-242, p. 342, § 6, effective April 6, 1989.**

**[AL ST SEC 34-24-274]**

*Current through End of 2003 Organizational Session*

**§ 34-24-275. Renewal; continuing education. [AL ST SEC 34-24-275]**

*Current through End of 2003 Organizational Session*

Every licensed podiatrist who desires to continue the practice of podiatry shall annually, on or before the first of October, pay to the secretary-treasurer of the state board a renewal registration fee in a reasonable amount set by the board and comply with such other conditions as may be prescribed by the State Board of Podiatry; provided, however, that said license shall be renewed within 30 days after October first, or the licensee shall pay the renewal registration fee and a penalty of \$300.00. Among the conditions to be prescribed by the State Board of Podiatry is the requirement that evidence be furnished by the applicant for renewal of completion of a continuing education program. Such program shall consist of no less than 12 hours, which shall be obtained at the annual state meeting of the Alabama Podiatry Association or any other continuing education program approved by the State Board of Podiatry. Any licensed podiatrist who is inactive in the practice of podiatry for a period of two years may have his license renewed to practice his profession on such conditions as may be prescribed by the State Board of Podiatry.

(Acts 1967, No. 741, p. 1586, § 15; Acts 1975, No. 1199, p. 2376, § 5; Acts 1979, No. 79-601, p. 1065, § 2; Acts 1985, No. 85-359, p. 300, § 3.)

**§ 34-24-276. Suspension or revocation; members of board immune from suit. [AL ST SEC 34-24-276]**

*Current through End of 2003 Organizational Session*

A license issued to any person may be suspended for a definite period of time or revoked by the State Board of Podiatry for any of the following reasons:

(1) Conviction of any offense involving moral turpitude, in which case the record of conviction or a certified copy thereof certified by the clerk of the court or by the judge in which court the conviction is had shall be conclusive evidence of such conviction;

(2) For unprofessional conduct; "unprofessional conduct" shall mean any conduct of a character likely to deceive or defraud the public, lending his license by any licensed podiatrist to any person, the employment of "cappers," or "steerers" to obtain business, "splitting" or dividing a fee with any person or persons, the obtaining of any fee or compensation by fraud or misrepresentation, employing directly or indirectly any suspended or unlicensed podiatrist to do any professional work, fraudulent or misleading advertising, the use of any advertising which does not include a disclaimer required by rules and

regulations of the board, carrying the advertising of articles not connected with the profession, the employment of any drugs or medicines in his practice unless authorized to do so by the laws covering the practice of medicine of this state;

(3) When a license or certificate has been obtained by fraud, deceit or misrepresentation, whether knowingly or unknowingly practiced on the board;

(4) When the holder of a license or certificate is suffering from a contagious or infectious disease;

(5) Gross incompetency, wilful or wanton negligence or repeated negligence in the practice of podiatry;

(6) Intemperance in the use of intoxicating liquors or narcotics to such an extent as to unfit the holder of the license for the proper practice of podiatry;

(7) Failure to renew license and pay penalty as prescribed herein;

(8) Failure to comply with continuing education requirements prescribed herein;

(9) Violating any rule or regulation promulgated by the Board of Podiatry; or

(10) Disciplinary action taken by another state based upon acts by a licensee similar to acts described in this section which results in suspension or revocation of a license or certificate to practice podiatry in another state. A certified copy of the record of the disciplinary action of the state taking such an action shall be conclusive evidence thereof.

Whenever charges are preferred against any holder of a license, the board shall fix a time and place for the hearing of the same, and a copy of the charges, which must be made in writing, and verified by oath, together with a notice of the time and place where they will be heard and determined, shall be served upon the accused at least 10 days before the date fixed for said hearing. When personal service cannot be effected, the board shall cause to be published at least 30 days prior to the date set for the hearing in a newspaper published in the county in which accused was last known to practice a notice to the effect that at a definite time and place a hearing will be held by the board on charges preferred against said person. The board may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books and records, documentary evidence and materials or other evidence; the accused shall have the right to be confronted by the person or persons preferring said charges, to cross-examine the witnesses against him, to be represented by counsel and to have the testimony taken down by a stenographer, but the expense of counsel and stenographer, either or both, shall be borne by the accused. Witnesses at hearings before the board shall testify under oath and may be sworn by any member of the board. In all cases of suspension or revocation of licenses as herein provided for, the holder may appeal to the circuit court, or other court of like jurisdiction, in the county in which the person whose license or certificate is ordered revoked resides.

Members of the Board of Podiatry or the members of any committee of podiatrists impaneled by the board, making any report or rendering any opinion or supplying any evidence or information or offering any testimony to the board in connection with a disciplinary investigation or action as authorized in this article shall be immune from suit for any conduct in the course of their official duties with respect to such investigations, actions or hearings.

(Acts 1967, No. 741, p. 1586, § 16; Acts 1987, No. 87-588, p. 970, § 1.)

Addition authority found in the *Code*.

**§ 20-2-2. Definitions.**

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) Administer. The direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

a. A practitioner or, in his or her presence, his or her authorized agent.

b. The patient or research subject at the direction and in the presence of the practitioner.

(2) Agent. An authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. Such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) Certifying boards. The State Board of Medical Examiners, the State Board of Health, the State Board of Pharmacy, the State Board of Dental Examiners, the State Board of Podiatry, and the State Board of Veterinary Medical Examiners.

(4) Controlled substance. A drug, substance, or immediate precursor in Schedules I through V of Article 2 of this chapter.

(5) Counterfeit substance. Substances which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) Deliver or delivery. The actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(7) Dispense. To deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) Dispenser. A practitioner who dispenses.

(9) Distribute. To deliver other than by administering or dispensing a controlled substance.

(10) Distributor. A person who distributes.

(11) Drug.

a. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary or any supplement to any of them.

b. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals.

c. Substances (other than food) intended to affect the structure or any function of the body of man or animals.

d. Substances intended for use as a component of any article specified in paragraphs a, b, or c of this subdivision. Such term does not include devices or their components, parts, or accessories.

(12) Immediate precursor. A substance which the State Board of Pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) Manufacture. The production, preparation, propagation, compounding, conversion, or processing of a controlled substance either directly or indirectly, by extraction from substances

of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container; except, that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

- a. By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or
- b. By a practitioner or by his or her authorized agent under his or her supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(14) Marihuana. All parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. Such term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(15) Narcotic drug. Any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

- a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.
- b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph a, but not including the isoquinoline alkaloids of opium.
- c. Opium poppy and poppy straw.
- d. Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(16) Opiate. Any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. Such term does not include, unless specifically designated as controlled under this section, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such term does include its racemic and levorotatory forms.

(17) Opium poppy. The plant of the species *Papaver somniferum* L., except its seeds.

(18) Person. Individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association or any other legal entity.

(19) Poppy straw. All parts, except the seeds, of the opium poppy, after mowing.

(20) Practitioner.

- a. A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.
- b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(21) Production. The manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) State. When applied to a part of the United States, such term includes any state, district,

commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(23) Ultimate user. A person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

(Acts 1971, No. 1407, p. 2378, § 101; Acts 1976, No. 699, p. 965, § 1; Acts 1989, No. 89-242, p. 342, § 3; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

**§ 20-2-50.** Certifying boards to promulgate rules and charge reasonable fees for registration and administration of provisions relating to manufacture, etc., of controlled substances; disposition of fees collected.

(a) The certifying boards shall promulgate rules and charge reasonable fees to defray expenses incurred in registration and administration of the provisions of this article in regard to the manufacture, dispensing or distribution of controlled substances within the state.

(b) The fees collected to defray expenses shall be retained by the certifying boards.

(Acts 1971, No. 1407, p. 2378, § 301; Acts 1976, No. 699, p. 965, § 2.)

**§ 20-2-51.** Registration of persons manufacturing, distributing or dispensing controlled substances -- General requirements.

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state must obtain annually a registration issued by the certifying boards in accordance with its rules.

(b) Persons registered by the certifying boards under this chapter to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

(f) The certifying boards may inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by them.

**§ 20-2-52.** Registration of persons manufacturing, distributing or dispensing controlled substances -- Standards; requirements as to practitioners conducting research; effect of federal registration.

(a) The certifying boards shall register only an applicant certified by their respective boards to manufacture, dispense or distribute controlled substances enumerated in Schedules I, II, III, IV and V; provided, that the State Board of Pharmacy shall register all manufacturers and wholesalers unless they determine that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the above-mentioned boards shall consider the following factors:

- (1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;
- (2) Compliance with applicable state and local law;
- (3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;
- (4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;
- (5) Furnishing by the applicant of false or fraudulent material in any application filed under this article;
- (6) Suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and
- (7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The State Board of Health need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the State Board of Health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article. (Acts 1971, No. 1407, p. 2378, § 303; Acts 1976, No. 699, p. 965, § 3.)

**§ 20-2-53.** Registration of persons manufacturing, distributing or dispensing controlled substances -- Order to show cause; proceedings; review; issuance of stay.

(a) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the certifying boards shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the certifying board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with the Alabama Administrative Procedure Act and the procedures established by the respective certifying board without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the

outcome of the administrative hearing.

(b) Anyone adversely affected by any order of a certifying board denying, suspending, or revoking a registration or refusing the renewal of a registration, whether or not such suspension, revocation, or registration is limited, may obtain judicial review thereof by filing a written petition for review with the Circuit Court of Montgomery County in accordance with Section 41-22-20.

(c) The following procedures shall take precedence over subsection (c) of Section 41-22-20 relating to the issuance of a stay of any order of the certifying board suspending, revoking, or restricting a registration. The suspension, revocation, or restriction of a registration shall be given immediate effect, and no stay or supersedeas shall be granted pending judicial review of a decision by the certifying board to suspend, revoke, or restrict a registration unless a reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the certifying board was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of a certifying board, including writ of mandamus, or judicial review pursuant to the Alabama Administrative Procedure Act, must be filed, commenced, and maintained in the Circuit Court of Montgomery County, Alabama.

(d) From the judgment of the circuit court, either the certifying board or the affected party who invoked the review may obtain a review of any final judgement of the circuit court under Section 41-22-21. No security shall be required of the certifying board.

(Acts 1971, No. 1407, p. 2378, § 305; Acts 1982, No. 82-492, p. 815, § 2; Act 2002-140, § 3.)

**§ 20-2-54.** Registration of persons manufacturing, distributing or dispensing controlled substances -- Revocation or suspension of registration -- Grounds and procedure generally.

(a) A registration under Section 20-2-52 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the certifying boards upon a finding that the registrant:

(1) Has furnished false or fraudulent material information in any application filed under this article;

(2) Has been convicted of a crime under any state or federal law relating to any controlled substance;

(3) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;

(4) Has violated the provisions of Chapter 23 of Title 34; or

(5) Has, in the opinion of the certifying board, excessively dispensed controlled substances for any of his patients.

a. A registrant may be considered to have excessively dispensed controlled substances if his certifying board finds that either the controlled substances were dispensed for no legitimate medical purpose, or that the amount of controlled substances dispensed by the registrant is not reasonably related to the proper medical management of his patient's illnesses or conditions. Drug addiction shall not be considered an illness or condition which would justify continued dispensing of controlled substances, except in gradually decreasing dosages administered to the patient for the purpose of curing the addiction.

b. A registrant who is a physician licensed to practice medicine in the State of Alabama may be considered to have excessively dispensed controlled substances if he or she prescribes, orders,



dispenses, administers, supplies or otherwise distributes any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug, and/or Schedule II sympathomimetic amine drug or compound thereof, and/or any salt, compound, isomer, derivative or preparation of the foregoing which are chemically equivalent thereto, and/or other non-narcotic Schedule II stimulant drug, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled Substances Act, Section 20-2-24, to any person except for the therapeutic treatment of:

1. Narcolepsy.
2. Hyperkinesia.
3. Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control.
4. Epilepsy.
5. Differential psychiatric evaluation of clinically significant depression provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression.
6. Clinically significant depression shown to be refractory to other therapeutic modalities provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression; or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol must be submitted to and reviewed and approved by the State Board of Medical Examiners before the investigation has begun. A physician prescribing, ordering or otherwise distributing the controlled substances listed above in the manner permitted by this subsection shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing, the name, dose, strength, and quantity of the drug, and the date prescribed or distributed. The records required under this subsection shall be made available for inspection by the certifying board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity.

(b) The certifying boards may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the certifying boards suspend or revoke a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The certifying boards shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders suspending or revoking registration and all forfeitures of controlled substances.

(Acts 1971, No. 1407, p. 2378, § 304; Acts 1979, No. 79-204, p. 313, § 1; Acts 1983, 4th Ex. Sess., No. 83-890, § 2; Act 2001-971, 3rd Sp. Sess., p. 873, 3rd Sp. Sess., p. 873, § 2.)

#### **§ 20-2-54.1. Rules and regulations.**

The certifying boards under the Alabama Uniform Controlled Substances Act, the State Board of Medical Examiners and the Medical Licensure Commission are each authorized to promulgate

such rules and regulations as may be required to implement the provisions of this chapter.  
(Acts 1983, 4th Ex. Sess., No. 83-890, § 4.)

**§ 20-2-55.** Registration of persons manufacturing, distributing or dispensing controlled substances -- Revocation or suspension of registration -- Suspension without prior order to show cause.

The certifying boards may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 20-2-54 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the certifying boards or dissolved by a court of competent jurisdiction.  
(Acts 1971, No. 1407, p. 2378, § 305.)

**§ 20-2-56.** Maintenance of records and inventories by registrants generally.

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules issued by the State Board of Medical Examiners, the State Board of Health or the State Board of Pharmacy.  
(Acts 1971, No. 1407, p. 2378, § 306; Acts 1976, No. 699, p. 965, § 4.)

**§ 20-2-57.** Distribution of certain controlled substances by one registrant to another registrant. Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.  
(Acts 1971, No. 1407, p. 2378, § 307.)

**§ 20-2-58.** Dispensing of controlled substances in Schedule II; maintenance of records and inventories by registered pharmacies.

(a) A pharmacist may dispense directly a controlled substance in Schedule II only pursuant to a written prescription signed by the practitioner. Except as provided in subsections (b) and (c), a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the agent of the practitioner to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance.

(b) A prescription written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or the agent of the practitioner to the home infusion pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(c) A prescription written for Schedule II substances for a resident of a long term care facility may be transmitted by the practitioner or the agent of the practitioner to the dispensing pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for the

substances shall be maintained in a separate prescription file.

(2) Inventories and records of controlled substances listed in Schedules III, IV and V shall be maintained either separately from all other records of the pharmacy or in the form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for the substances shall be maintained either in separate prescription file for controlled substances listed in Schedules III, IV and V only or in the form that they are readily retrievable from the other prescription records of the pharmacy.

(e) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug as determined under State Board of Health statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(f) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(Acts 1971, No. 1407, p. 2378, § 308; Acts 1995, No. 95-732, p. 1565, § 1; Act 98-617, p. 1358, § 1.)



## **Administrative Rules**

### **CHAPTER 730-X-1 ORGANIZATION AND ADMINISTRATION**

**730-X-1-.01 Composition Of The Board.** The Board of Podiatry of the State of Alabama is composed of seven (7) practicing podiatrists appointed by the Governor of the State of Alabama who possess such qualifications as prescribed by law and who serve staggered terms of five (5) years.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §34-24-250.

**History:** Filed February 1, 1985.

#### **730-X-1-.02 Officers Of The Board.**

(1) The Board shall elect from its members a president and a vice president and a secretary-treasurer. The election of officers shall be held annually.

(2) The duties of the officers shall be as follows:

(a) The president shall preside at meetings of the Board and appoint members to serve on such committees as may be created.

(b) The vice president shall preside in the absence of the president and shall assume the duties of the president when necessary.

(c) The secretary-treasurer shall keep and maintain records and funds of the Board, keep minutes of all meetings, and assume other duties at the discretion of the president.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §34-24-250.

**History:** Filed February 1, 1985.

#### **730-X-1-.03 Meetings Of The Board.**

(1) The Board shall meet annually and may meet at such additional times as called for by the President, or by a petition of a majority of the members of the Board.

(2) At least four (4) members of the Board shall constitute a quorum and as such shall be competent to act.

(3) The Secretary-Treasurer or his designee shall keep a record of all meetings. The place of each meeting of the Board, names of the members present, all official acts of the Board, and the votes shall be recorded in the minutes. The minutes shall be presented for approval or amendment at the next regular meeting, which upon approval will be signed by the Chairman. The minutes, not including any section relating to the good name or character of an individual, shall be open to public inspection.

(4) All meetings of the Board, not including any part relating to the good name or character of an individual, shall be open and public. Reports of investigations, documents subpoenaed by the Board, reports of any investigative committee appointed by the Board, memorandum of the Board's counsel relating to

investigations, statements of persons interviewed by the Board or any committee of the Board unless made at a public hearing, shall be considered privileged and confidential and shall not be disclosed except to an agent, attorney or employee of the Board. The foregoing non-public records of the Board shall not be subject to subpoena except upon the express order of a court of competent jurisdiction.

(5) Meetings of the Board are governed by **Roberts' Rules of Order**, Newly Revised, and/or any amendments adopted by the Board.

**Author:** E. Terry Brown, Copeland, Franco, Screws & Gill, P.A.

**Statutory Authority:** Code of Ala. 1975, §§34-24-251, 34-24-252.

**History:** Filed February 1, 1985. **Amended:** Filed May 14, 2001; effective June 18, 2001.

**730-X-1-.04 Executive Secretary.** The Board may employ a qualified individual to serve as executive secretary, whose duties, responsibilities and compensation shall be set by the Board.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §34-24-252.

**History:** Filed February 1, 1985.

**730-X-1-.05 Staff/Administrative Personnel.** The Board or the executive secretary with the concurrence of the Board may employ qualified individuals to serve as staff and/or administrative personnel. The duties, responsibilities and compensation for each such employee shall be set by the Board.

**Author:**

**Statutory Authority:** Code of Ala 1975, §34-24-252.

**History:** Filed February 1, 1985.

**730-X-1-.06 Powers And Duties Of The Board.** The Board is authorized to:

(a) Adopt and promulgate rules and regulations and to do such other acts as may be necessary to carry into effect the duties and powers which accrue to the Board under laws now in force or which may hereafter be in force;

(b) Issue licenses to applicants meeting the statutory qualifications for licensure.

(c) Commence and maintain proceedings to restrain the unlawful practice of podiatry.

(d) Prescribe, administer and/or approve an examination in certain specified branches of medical learning;

(e) Provide for the safekeeping of complete records of all examinations held by the Board;

(f) Keep complete minutes of all the Board's proceedings;

(g) Prescribe the form and content of the oral examination required by law, govern the conduct of such examination and set the standards of said oral examination;

- (h) Keep records of all reports of claims, actions or violations concerning the performance of all licensees, professional and legal duties and to review the reports annually.
- (i) Furnish all personnel and facilities necessary to administer and enforce the provisions of law relating to the Alabama State Board of Podiatry;
- (j) Employ a legal advisor or attorney when deemed necessary to aid the Board;
- (k) Certify applications of Alabama licenses for reciprocity in other states;
- (l) Promote continuing medical education of all podiatrists licensed by the Board;
- (m) The Board on its own motion or in response to any complaint submitted to the Board may investigate any evidence which appears to show that a licensee holding a license to practice podiatry in Alabama is or may be guilty of any of the acts, offenses, or conditions set out in Code of Ala. 1975, §34-24-276. Any hearings conducted by the Board pursuant to its investigative power shall not be deemed a contested case under Rule 730-X-4-.01, et seq.
- (n) Suspend, revoke or nonrenew a license to practice podiatry when the statutory grounds for suspension, revocation or nonrenewal are present;
- (o) Accept surrender of a license to practice podiatry.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §§34-24-231, 34-24-252, 34-24-255, 34-24-256, 34-24-257, 34-24-270, 34-24-271, 34-24-273, 34-24-275, 34-24-276.

**History:** Filed February 1, 1985.

**730-X-1-.07 Rules And Regulations.**

- (1) All rules and regulations of the Board shall be adopted, amended or repealed in accordance with the Alabama Administrative Procedure Act, Code of Ala. 1975, §§41-22-1, et seq.
- (2) Prior to adoption, amendment or repeal of any rule the Board shall:
  - (a) Give at least thirty-five (35) days' notice of its intended action. Such notice shall include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon; and the notice shall be published in the Alabama Administrative Monthly; and
  - (b) Afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. The Board shall consider fully all written and oral submissions respecting the proposed rule.

(3) If the Board finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than thirty-five (35) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing it finds practical, to adopt an emergency rule. The rules may be effective for a period of not longer than one hundred twenty (120) days.

(4) After adoption by the Board, each rule shall be filed with the Legislative Reference Service, becoming effective thirty-five (35) days thereafter.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §41-22-5.

**History:** Filed February 1, 1985.

**730-X-1-.08 Petition For Adoption, Amendment Or Repeal Of A Rule.**

(1) Any interested person may petition the Board requesting the adoption, amendment or repeal of a rule. The petition shall:

- (a) be submitted in writing;
- (b) include an exact statement of the proposed rule, amendment or identification of the rule to be repealed;
- (c) include the pertinent facts, data, opinions or arguments in support of the petitioner's position.

(2) Within sixty (60) days after submission of a petition, the Board shall initiate rule-making proceedings or shall deny the petition in writing on the merits, stating its reasons for the denial.

(3) A petition requesting adoption, amendment or repeal of a rule shall not be considered by the Board if the subject of the petition is the same or similar to the subject presented in another petition considered by the Board within the previous twelve (12) months.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §41-22-8.

**History:** Filed February 1, 1985.

**730-X-1-.09 Declaratory Rulings.**

(1) Any persons substantially affected by a rule may petition the Board for a declaratory ruling with respect to the validity of a rule or the applicability to any person, property or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the Board.

(2) The petition shall be in writing and shall include:

- (a) the name and address of the petitioner;
- (b) a statement of facts sufficient to show that the person seeking relief is substantially affected by the rule;
- (c) the rule, statute or order and the reasons for the questions;

(3) The petition shall be considered and answered in writing by the Board within forty-five (45) days unless the Board is unable to reach a decision on the facts presented.



(4) Circumstances in which rulings shall not be issued include but are not necessarily limited to:

- (a) lack of jurisdiction;
- (b) lack of clarity of the issues presented;
- (c) no clear answer determinable.

(5) In the event the Board fails to issue a declaratory ruling on the merits within forty-five (45) days of the request for such a ruling, said failure shall constitute a denial of the request as well as a denial of the merits of the request.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §41-22-11.

**History:** Filed February 1, 1985.

**730-X-1-.10 Public Inspection Of Rules.**

(1) All rules and other written statements of policy or interpretations formulated, adopted or used by the Board in the discharge of its functions shall be made available for public inspection and copying, at cost.

(2) All final orders, decisions and opinions of the Board shall be available for public inspection and copying, at cost, except those expressly made confidential or privileged by statute or order of the court.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §41-22-4.

**History:** Filed February 1, 1985.

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**CHAPTER 730-X-2 DEFINITIONS**

**730-X-2-.01 Definitions.** The Alabama State Board of Podiatry hereby adopts by reference as its rule Code of Ala. 1975, § 34-24-230.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §§ 34-24-252, 41-22-9.

**History:** Filed February 1, 1985.

**CHAPTER 730-X-3 CERTIFICATE OF QUALIFICATION**

**730-X-3-.01 Application For License To Practice Podiatry:**

**Certification By Examination.** The Board may issue a license to practice podiatry to applicants who possess the following qualifications:

- (a) At least twenty-one (21) years of age or over, a citizen of the United States, and of good moral character;
- (b) Diploma showing graduation from a college of podiatry recognized by the American Podiatric Medical Association, together with record transcripts from the college of podiatry from which he or she graduated;

(c) Must have completed a podiatric residency or preceptorship program approved by the American Podiatric Medical Association or otherwise approved by the Board;

(d) Two written statements as to character from two currently licensed podiatrists;

(e) Notarized application and examination fees as prescribed by the Board;

(f) Diplomate Certificate of National Board of Podiatry Examiners showing successful completion by the applicant of all parts of the National Board of Podiatry Examiners, together with transcripts of all parts of the applicant's National Board Examinations.

(g) Successful completion of such examination as shall be prescribed by the Board in the areas of practical, theoretical and physiological podiatry, in the anatomy and physiology of the human foot, and in pathology as applied to podiatry. Said examination will be given annually on the last Saturday and Sunday in July. An unsuccessful examinee may take a second examination at the next scheduled examination date.

(h) Successful completion of an examination that tests the applicant's knowledge of the Podiatry Practice Act and the rules and regulations of the Board.

**Authors:** E. Terry Brown, Copeland, Franco, Screws & Gill, P.A.

**Statutory Authority:** Code of Ala. 1975, §§34-24-255, 34-24-257.

**History:** Filed February 1, 1985. **Amended:** Filed October 15, 1993; effective November 26, 1993.

**730-X-3-.02 Application For Examination.** An application for a license to practice podiatry may be obtained from the secretary-treasurer of the Alabama State Board of Podiatry, 5220 Meadow Brook Road, Birmingham, Alabama, 35242.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §34-24-255.

**History:** Filed February 1, 1985.

**730-X-3-.03 Application For License To Practice Podiatry: Certification By Reciprocity.**

(1) The commission of any of the acts specified in Code of Ala. 1975, §34-24-276, (as that statute presently exists or may be amended) by an applicant may be grounds for denial, within the discretion of the Board, of an application for license to practice podiatry by reciprocity.

(2) The Board may issue a license by reciprocity to practice podiatry to applicants who possess the following qualifications:

(a) At least twenty-one (21) years of age or over, a citizen of the United States, and of good moral character;

(b) Graduate from a college of Podiatry accredited by the American Podiatric Medical Association located in the United States (the fifty states and the District of Columbia) shall be

deemed to be U.S. Podiatric graduate and shall meet the following requirements:

(c) Must have completed a podiatric residency or preceptorship program approved by the American Podiatric Medical Association or otherwise approved by the Board;

(d) Examination and/or certification by one of the following:

1. Applicants must present a certified statement from the Board of Podiatry or like board of the state or territory from which he or she removes, certifying that he or she is a citizen of the United States, over the age of twenty-one (21) years, is a legal and ethical podiatrist of good moral character and that he or she has been examined and licensed by the board of such state or territory, and provided that the board of such state or territory recognizes in like manner a license issued by the Alabama State Board of Podiatry when presented to such other board by a legal practitioner of this state who may wish to remove to and practice in such state or territory; or

2. Examination as presented by part 730-X-3-.01(1).

(3) The Board may, within its discretion, require that an applicant attend a personal interview with the credentials committee of the Board or, at its discretion, a representative of the Board in the following circumstances:

(a) when the applicant's answer to any question on the application is incomplete or requires additional explanation;

(b) when the Board is in receipt of any information from any source concerning the applicant that would require additional information or explanation;

(c) when it appears that the applicant may have committed any of the acts constituting grounds for revocation of a license as stated in Code of Ala. 1975, §34-24-276.

(4) The applicant shall submit written statements as to character from each of the following:

(a) A podiatrist licensed to practice podiatry in Alabama.

(b) Another podiatrist.

(c) A podiatrist or layman.

(5) The applicant shall submit the application fee as prescribed by the Board.

(6) The applicant shall submit a completed and notarized application with proper required certification.

(7) Successful applicants must within twelve (12) months, unless otherwise allowed by the Board, relocate his office to this state for the full-time practice of podiatry. Failure to do so will result in the suspension of his license.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §§34-24-255, 34-24-271, 34-24-276.

**History:** Filed February 1, 1985.

**730-X-3-.04 Application For Reciprocity.** An example of the application for a license to practice podiatry may be obtained from the secretary-treasurer of the Alabama State Board of Podiatry, 5220 Meadow Brook Road, Birmingham, Alabama 35242.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §34-24-271.

**History:** Filed February 1, 1985.

**730-X-3-.05 Outgoing Reciprocity. (Repealed)**

**Author:** E. Terry Brown, Copeland, Franco, Screws & Gill, P.A.

**Statutory Authority:** Code of Ala. 1975, §34-24-272.

**History:** Filed February 1, 1985. **Repealed:** Filed May 14, 2001; effective June 18, 2001.

**730-X-3-.06 Renewal Of License To Practice Podiatry.**

(1) Licensed Podiatrists shall apply to the Board to renew their license by October 1 of each year provided that said license may be renewed within thirty (30) days of October 1. After October 31, renewal will be approved upon payment of the renewal fee and penalty prescribed by law. Failure to renew by November 1 of each year may, after notice and an opportunity to be heard, render said license non-valid and may subject the holder to the statutory penalties of Code of Ala. 1975, §34-24-270, should he continue to practice podiatry under said non-valid license.

(2) As a pre-condition to renewal, all licensed podiatrists shall submit at the time of renewal evidence of successful completion of any American Podiatric Medical Program approved course of study of not less than twelve (12) hours or not less than twelve (12) hours of study approved by the Board. Failure to submit such evidence may, after notice and an opportunity to be heard, render said license non-valid. If the licensee fails to provide proof of compliance with this rule by November 1 of each year, the licensee shall pay the penalty of \$300 set out in Code of Ala. 1975, §34-24-275.

(3) As a precondition to renewal each licensed podiatrist shall submit to the board, at the time of renewal, an update of his/her credentials including accomplishments such as board certification and professional affiliations.

(4) Every licensed podiatrist shall, within 90 days of a change in his/her address, notify the board of his/her new address.

**Author:** E. Terry Brown, Copeland, Franco, Screws & Gill, P.A.

**Statutory Authority:** Code of Ala. 1975, §34-24-270.

**History:** Filed February 1, 1985. **Amended:** Filed February 11, 1994; effective March 18, 1994. **Amended:** Filed March 8, 1995; effective April 12, 1995. **Amended:** Filed May 14, 2001; effective June 18, 2001

**730-X-3-.07 Appeal From Denial Of Application For License.** An applicant may request a hearing before the Board of any decision of the Board denying an application for a license to practice

podiatry. The procedure for such a request shall be governed by Rule 730-X-4-.04(11).

**Author:** E. Terry Brown

**Statutory Authority:** Code of Ala. 1975, §34-24-275.

**History:** Filed February 1, 1985.

**730-X-3-.08 Controlled Substances.**

(1) It shall be necessary for all licensed podiatrists who dispense, administer, prescribe, maintain or otherwise have in their possession controlled substances to annually register with the Alabama State Board of Podiatry and obtain a controlled substance number from said Board.

(2) This controlled substance number as well as the Federal Bureau of Narcotics and Dangerous Drug number must appear on prescription blanks.

(3) Registration under this rule will be due at the same time as the annual license registration to practice podiatry.

(4) The fee for registration and the controlled substance number shall be in an amount to be fixed by the Board.

(5) Any licensed podiatrist dispensing, administering, prescribing, maintaining, or possessing controlled substances who has not registered or obtained a controlled substance number from the Alabama State Board of Podiatry will be deemed in violation of the Uniform Controlled Substances Act and Code of Ala. 1975, §34-24-276.

**Authors:** Copeland, Franco, Screws & Gill, P.A.

**Statutory Authority:** Code of Ala. 1975, §§34-24-252, 34-24-276, as amended by Alabama Act 87-588; §§20-2-1, et seq.

**History:** Filed May 18, 1988.

**730-X-3-.09 Maintenance Of Controlled Substances Records And Inventory.**

(1) Beginning on October 1, 1988, every podiatrist certified to dispense controlled substances by the Alabama State Board of Podiatry shall be required to maintain an accurate inventory and separate dispensing record of all controlled substances in Schedules II and III dispensed in their offices. The inventory shall account for all controlled substances obtained by the office or the podiatrist.

(2) The dispensing record shall contain the following information:

(a) The date the controlled substance was dispensed;

(b) The method by which the controlled substance was dispensed (i.e., administered in office or released to patient);

(c) The name of the controlled substance dispensed, trade name or generic name;

(d) The name of the patient to whom the controlled substance was dispensed;

(e) The quantity of the controlled substance dispensed.

(3) The inventory and separate dispensing record required by this rule shall be kept in the office of the podiatrist for a period of five (5) years from the date the controlled substances are dispensed and shall be made available for inspection by agents of the Alabama State Board of Podiatry or any law enforcement agency.

(4) Failure to maintain and make available the inventory and separate dispensing record required by this rule shall be considered a failure to maintain effective controls against diversion of controlled substances to other than legitimate podiatric channels and will also be considered a violation of Code of Ala. 1975, §34-24-276.

(5) The dispensing record shall be in the form set out in Appendix A to Chapter 9.

**Authors:** Copeland, Franco, Screws & Gill, P.A.

**Statutory Authority:** Code of Ala. 1975, §§34-24-252, 34-24-276, as amended by Alabama Act 87-588; §§20-2-1, et seq.

**History:** Filed May 18, 1988. **Amended:** Filed October 15, 1993; effective November 26, 1993. **Amended:** Filed March 8, 1995; effective April 12, 1995.

**730-X-3-.10 Application And Examination Fees.** Applicants for licensure to practice podiatry shall pay the following fees:

(1) Application fee of not more than \$200.00;

(2) State examination fee of not more than \$200.00.

**Author:** Randolph P. Reaves, Randolph P. Reaves, P.C.

**Statutory History:** Code of Ala. 1975, §34-24-255.

**History: New Rule:** Filed October 15, 1993; effective November 26, 1993. **Amended:** Filed May 14, 2001; effective June 18, 2001.

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## **CHAPTER 730-X-4 DISCIPLINARY ACTIONS, HEARINGS AND APPEALS**

**730-X-4-.01 Application And Scope.** Unless otherwise specified, all hearings conducted by the Alabama State Board of Podiatry shall be considered a contested case under the Alabama Administrative Procedure Act (Code of Ala. 1975, § 41-22-1 et seq.), and shall be conducted in accordance with the requirements of that act, and the rules and regulations as set out in this chapter. Nothing contained herein shall preclude the informal disposition of contested cases as permitted by Code of Ala. 1975, § 41-22-12(e) and other pertinent provisions of these rules.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §§ 41-22-1, et seq.; 34-24-252, 34-24-276.

**History:** Filed February 1, 1985.

**730-X-4-.02 Grounds For Denial Of, Suspension, Revocation Or Nonrenewal Of A License To Practice Podiatry.** A license to

practice podiatry may be denied to any person failing to meet the qualifications for license as set out in Code of Ala. 1975, §§ 34-24-271, 273, and Rules 730-X-3-.01, et seq. Renewal of a license to practice podiatry may be denied for failure to comply with Code of Ala. 1975, § 34-24-275. A license to practice podiatry may be suspended or revoked for any of the reasons expressed in Code of Ala. 1975, § 34-24-276.

**Authors:** Copeland, Franco, Screws & Gill, P.A.

**Statutory Authority:** Code of Ala. 1975, §§ 34-24-271, 34-24-273, 34-24-275, 34-24-276.

**History:** Filed February 1, 1985. **Amended:** Filed May 18, 1988.

**730-X-4-.03 Notice.**

(1) No action to revoke, suspend or nonrenew a license to practice podiatry shall be taken until the licensee has been afforded an opportunity for a hearing after reasonable notice in writing, verified by oath, has been served. Where personal service cannot be effected, the Board may cause notice to be given by certified mail, return receipt requested, and if service cannot be obtained by certified mail, service can be effected by publishing an abbreviated notice at least 30 days prior to the date set for said hearing in a newspaper published in the county in which the licensee was last known to practice that at a definite time and place a hearing will be held by the Board concerning that person's license to practice podiatry.

(2) The notice, except abbreviated notice for service, shall include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters or charges asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished.

**Authors:** Copeland, Franco, Screws & Gill, P.A.

**Statutory Authority:** Code of Ala. 1975, §§ 34-24-276, 41-22-1, et seq.

**History:** Filed February 1, 1985. **Amended:** Filed May 18, 1988.

**730-X-4-.04 Conduct Of Hearings In Contested Cases.**

(1)(a) The president of the Board, or in his absence, the vice president of the Board, or in his absence, the secretary-treasurer of the Board, shall preside during hearings but may rely upon the assistance and advice of a hearing officer. A

quorum of the Board necessary to decide contested cases is set at five (5) members of the Board.

(b) In all instances in which a complaint has been filed with the Board, one member of the Board shall be appointed the investigating officer. This Board member shall assist in the investigation, and if necessary, the prosecution, of the case, and shall not vote at the hearing.

(2) If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all material issues involved and to be represented by counsel at their own expense.

(4) Unless precluded by statute, informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing.

(5) Parties and witnesses may be subpoenaed and compelled to attend the hearing and shall testify under oath and may be sworn by any member of the Board. The expense of the subpoenas, including mileage and per diem as specified by law, shall be borne by the party requesting the subpoena. The Board or hearing officer may prescribe reasonable time limitations for the filing of requests for witnesses and documents and may further require the payment of the expenses per such subpoena in advance.

(6) Contested Hearings shall be open to the public, unless private hearings are otherwise authorized by law. The proceedings shall be recorded either by mechanized means or by qualified shorthand reports. The proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of the proceedings or the transcription thereof shall be filed with and maintained by the Board for at least five years from the date of decision, and shall be made available for inspection by the public except in those cases where private hearings are authorized by law, or where the proceedings shall be ordered sealed by order of court, or are required to be sealed by statute.

(7) Evidence.

(a) The rules of evidence as applied in non-jury civil cases in the circuit courts of this state shall be followed insofar as possible. Whenever any evidence is excluded as inadmissible, all such evidence existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof by means of a brief statement on the record describing the testimony excluded. All



rulings on the admissibility of evidence shall be final and shall appear in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified form; provided, the adversary party shall not be denied the right of cross-examination of the witness.

(b) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the Board. Upon request, parties shall be given an opportunity to compare the copy with the original.

(c) A party may conduct cross-examination required for a full and true disclosure of the facts, except as may otherwise be limited by law.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the Board. Parties shall be afforded an opportunity to contest such facts before the decision is announced unless the Board determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

(e) The experience, technical competence, and specialized knowledge of the Board may be utilized in the evaluation of the evidence.

(8) Record. The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) All evidence received or considered and all other submission; provided, in the event that evidence in any proceeding may contain proprietary and confidential information, steps shall be taken to prevent public disclosure of that information.

(c) A statement of all matters officially noticed.

(d) All questions and offers of proof, objections and rulings thereon.

(e) All proposed findings and exceptions.

(f) Any decision, opinion or report by the hearing officer at the hearing.

(g) All staff memoranda or data submitted to the hearing officer or members of the Board in connection with their consideration of the case unless such memoranda or data is protected as confidential or privileged; provided, if such memoranda or data contains information of a proprietary and confidential nature, it shall be protected by the Board from public disclosure.

(h) The recording or stenographic notes of the proceedings or the transcription thereof if requested by a party or the Board.

(9) Proposed Orders; Final Decisions; Examinations of Evidence. In a contested case, a majority of the Board who are to render

the final order must be in accord for the decision of the Board to be a final decision. If any official of the Board who is to participate in the final decision has not heard the case or read the record, and his vote would affect the final decision, the final decision shall not be made until a proposed order is prepared and an opportunity is afforded to each party adversely affected by the proposed order to file exceptions and present briefs and oral argument to the official not having heard the case or read the record. The proposed order shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision prepared by the person who conducted the hearing or one who read the record. The proposed order shall become the final decision of the Board without further proceedings unless there are exceptions filed to the Board within the time provided by rule. The parties by written stipulation may waive compliance with this section.

(10) Final Decisions and Orders.

(a) The final order in a proceeding which affects substantial interest shall be in writing and made a part of the record and include findings of fact and conclusions of law separately stated, and it shall be rendered within thirty days:

1. After the hearing is concluded, if conducted by the Board;
2. After a recommended order, or findings and conclusions are submitted to the Board and mailed to all parties, if the hearing is conducted by a hearing officer; or
3. After the Board has received the written and oral material it has authorized to be submitted, if there has been no hearing. The 30 day period may be waived or extended with the consent of all parties.

(b) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request.

(c) If the Board finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such findings in the final order, which shall be appealable or enjoined from the date rendered.

(d) Parties shall be notified either personally or by certified mail, return receipt requested, of any order; and, unless waived, a copy of the final order shall be so delivered or mailed to each party or to his attorney of record.

(11) Application for Rehearing.

(a) Any party to a contested case who deems himself aggrieved by a final order or Board Action and who desires to have the same modified, set aside, or reconsidered may within fifteen days after entry of said order or Board action file an application for rehearing which shall specify in detail the grounds for the relief sought therein and authorities in support thereof.

(b) The filing of such an application for rehearing shall not extend, modify, suspend or delay the effective date of the order, and said order shall take effect on the date fixed by the agency and shall continue in effect unless and until said application shall be granted or until said order shall be superseded, modified, or set aside in a manner provided by law.

(c) Such application for rehearing will lie only if the final order is:

1. in violation of constitutional or statutory provisions;
2. in excess of the statutory authority of the Board;
3. in violation of an agency rule;
4. made upon unlawful procedure;
5. affected by other error of law;
6. clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
7. unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(d) Copies of such application for rehearing shall be served on all parties of record, who may file replies thereto.

(e) Within 30 days from the filing of an application the Board may in its discretion enter an order:

1. setting a hearing on the application for a rehearing which shall be heard as soon as practicable; or
2. with reference to the application without a hearing; or
3. grant or deny the application.

(f) If the Board enters no order whatsoever regarding the application within the 30 day period, the application shall be deemed to have been denied as of the expiration of the 30 day period.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §§ 41-22-1, et seq.

**History:** Filed February 1, 1985. Amended: Filed October 22, 1993; effective November 26, 1993.

**730-X-4-.05 Judicial Review Of Contested Cases.** A person who has exhausted all administrative remedies available within the agency (other than rehearing) and who is aggrieved by a final decision in a contested case is entitled to judicial review as provided by the Alabama Administrative Procedure Act, Code of Ala. 1975, §§ 41-22-1, et seq.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §§ 41-22-1, et seq.

**History:** Filed February 1, 1985.

**730-X-4-.06 Hearing Officer.**

(1) A hearing officer is an individual appointed by the Board to act in such capacities and with such authority as is specified herein. A hearing officer may be an attorney licensed to practice law in the State of Alabama, or may be any person with the experience and qualifications necessary to carry out the duties of the hearing officer.

(2) The general duties of the hearing officer shall be to guide and direct the court of contested cases before the Board, to advise the Board on matters of law and evidence pertaining to those contested cases and to assist the Board in the preparation of orders and decrees resulting from hearings on contested cases. Specifically, the hearing officer shall be empowered to:

(a) Rule upon any motions contesting or challenging the legal sufficiency of a complaint, order to show cause, or other document which is the basis of a contested case, subject to the limitation set forth in paragraph (e) below.

(b) Rule on all prehearing motions by all parties to a contested case except that the hearing officer may not grant a continuance or postponement of a hearing in a contested case without the consent of the president of the Board.

(c) Order the attendance of parties and/or attorneys at hearings and conferences on matters related to the contested case.

(d) Establish on behalf of the Board submission dates, deadlines and time tables which shall be binding on the parties in all matters related to the orderly conduct of the contested case.

(e) Enter orders on behalf of the Board when the Board is not in session on legal matters related to a pending contested case, except that the hearing officer is not authorized to dismiss a complaint. The hearing officer may order the complainant to file a more definite statement or to amend his complaint to provide additional information. Dismissal of a complaint will only be upon the order of the Board.

(f) Administer oaths and to certify the authenticity of documents when required in the discharge of his duties as hearing officer in a contested case.

(g) Direct that evidence relevant to the general character and reputation of the registrant be submitted in writing by affidavit or to place reasonable limitations upon the number of witnesses permitted to testify as to the character and reputation of the registrant.

(h) Render advice as to the president of the Board on the conduct of all aspects of hearings on contested cases.

(3) Except as limited above, the hearing officer is authorized to rule on all legal matters, including motions addressed to the

sufficiency of the complaint, objections to the evidence, motions to dismiss for lack of evidence, and any other matters requiring a legal opinion. The ruling of the hearing officer shall be deemed to be the official ruling of the Board unless that ruling is challenged by a member of the Board in which case the Board shall consider the challenge to the ruling of the hearing officer outside the presence of the parties and may affirm, modify or overrule the decision of the hearing officer.

(4) The hearing officer shall advise the Board on matters of evidence and law during its deliberations and shall, if requested, prepare and present for consideration by the Board proposed findings of fact and proposed conclusions of law; provided, however, that the Board in its final decision may within its sole discretion, modify, alter, amend, or disregard such proposed findings of fact and conclusions of law.

(5) When directed by the Board, the hearing officer shall prepare the final order reflecting the decision of the Board in each contested case. The final order shall be executed and authenticated in the manner prescribed by the Board.

(6) When directed by the Board, the hearing officer shall notify all parties to the hearing of the final order of the Board and of all appellate remedies available to any party that is adversely affected by a decision of the Board.

(7) In addition, the hearing officer shall be authorized to perform such duties and functions in each specific case as may be prescribed by the Board, it being the intent of this rule that the hearing officer shall be the chief legal advisor to the Board in the conduct and disposition of all contested cases; however, the Board shall retain the authority in all cases to hear all evidence and argument and be the sole judge of the facts. The Board shall fix the penalty or restriction, if any, to be imposed at the conclusion of a contested case. The Board shall appoint a hearing officer in each contested case unless the case is subject to informal disposition as otherwise provided in these rules.

(8) The person appointed by the Board to act as a hearing officer in the contested case shall not have participated in the investigation or prosecution of the registrant in the matters pertaining to the contested case. The hearing officer shall not have a manifest conflict of interest with any party in a contested case.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §§34-24-252; 41-22-1, et seq.

**History:** Filed February 1, 1985.

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## **CHAPTER 730-X-5 ADVERTISING**

### **730-X-5-.01 Definitions.**

(1) Advertising is the communication of information in a manner designed to attract public attention to the practice of one or more podiatrists.

(2) Fraudulent Or Misleading Advertising. Fraudulent or misleading advertising is advertising which:

- (a) Contains a misrepresentation of facts; or
- (b) Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts; or
- (c) Is intended or is likely to create false or unjustified expectations of favorable results; or
- (d) Implies unusual or superior podiatric ability; or
- (e) Contains other representations or implications that in reasonable probability will cause an ordinary and prudent person to misunderstand or be deceived; or
- (f) Unless otherwise excused by these rules, does not contain the following disclaimer in conspicuous form:

"No representation is made about the quality of the podiatric services to be performed or the expertise of the podiatrist performing such services."

**Author:** Copeland, Franco, Screws & Gill, P.A.

**Statutory Authority:** Code of Ala. 1975, §§ 34-24-252, 34-24-276, as amended.

**History:** Filed May 18, 1988.

### **730-X-5-.02 Professional Notices, Letterheads, Offices, and Podiatric Lists.**

A podiatrist may use the following without the "disclaimer" stated above if in dignified form:

- (a) A professional card, appointment slips or cards, letterhead, or similar professional notices, identifying the podiatrist by name, and as a podiatrist either by reference to the term "podiatrist" or to any other commonly accepted professional designation, and giving his addresses, telephone numbers, the name of his office and any special area of practice approved by the American Podiatric Medical Association in which the podiatrist has met the existing educational requirements and standards set forth by that association;
- (b) A brief professional announcement card stating new or changed associations or addresses, change of office name, or similar matters pertaining to the professional office of a podiatrist, which may be mailed to other podiatrists, patients, former patients, personal friends, and relatives, and published no more than twice in a local newspaper. It shall not state biographical data except to the extent reasonably necessary to identify the podiatrist or to explain the change in his association.
- (c) A sign on or near the door of the podiatrist and in the building directory identifying the podiatrist, his professional

association or professional corporation, his address, telephone numbers, and office hours, and his identification as a podiatrist, either by reference to the term "podiatrist" or any other commonly accepted professional designation.

(d) A listing of the office of a podiatrist in the alphabetical and classified sections of the telephone directory or the directories for the geographical area or areas from which the podiatrist resides or maintains offices or in which a significant part of his clientele resides and in the city directory of the city in which his office is located, but the listing shall give only the name of the podiatrist, the name of his professional association or professional corporation, his identification as a podiatrist either by reference to the term "podiatrist" or to any other commonly accepted professional designation, his address, telephone numbers, and office hours;

(e) Listing in a reputable podiatric list or podiatric directory giving brief biographical and other informative data.

(f) Whenever a podiatrist advertises a board certification, the board issuing the certification shall be clearly identified and not just by initials or other abbreviations.

**Authors:** Copeland, Franco, Screws & Gill, P.A.

**Statutory Authority:** Code of Ala. 1975, §§ 34-24-276, as amended.

**History:** Filed May 18, 1988. Amended: January 18, 1994. Amended: Filed February 11, 1994; effective March 18, 1994.





## Board Members



## ALABAMA STATE BOARD OF PODIATRY

**February 2004**

### **BOARD MEMBERS**

<u>Board Member/ Date of Appt.</u>	<u>Position</u>	<u>Address</u>	<u>Term Expires March 25th</u>
Daniel S. Gaffin, DPM 2/4/00	Pres. '01-'04	2152 Airport Blvd., #103 Mobile, AL 36606	2004
Richard L. Kuhn, DPM 2/4/00		17 Medical Park Valley, AL 36854	2004
*David Roberson, DPM 2/4/00	Sect/T '01-'04	840 Oak Grove Road Homewood, AL 35209	2004
John P. Calcatera, DPM 9/2/00		2012 8th Court South Birmingham, AL 35205	2005
Robert J. Russell, DPM 8/28/01		1717 11th Avenue S. #402 Birmingham, AL 35205	2006
Mark S. Veres, DPM 10/02		4152 Cannichael Road Montgomery, AL 36106	2007
*Tara Blasingame, DPM 7/03		105 W. Dublin Drive, Suite B Madison, AL 35810	2008
<b>OFFICIAL</b>			
Gail Clark (Mrs.)	Admin. Assistant	Board of Podiatry 311 Saint Charles Street Birmingham, AL 35209	

\*racial minority member

A handwritten signature in cursive script that reads "Gail Clark".



## **ALABAMA STATE BOARD OF PODIATRY**

311 SAINT CHARLES STREET  
Homewood, Alabama 35209  
phone 205.445.0760 fax 205.445.0760  
[www.alabamapodiatryboard.org](http://www.alabamapodiatryboard.org)

October 6, 2004

**Representative Howard Sanderford**  
**Chairman, Sunset Committee**  
**Alabama State House**  
**Montgomery, AL 36130**

**Dear Representative Sanderford:**

On behalf of the Alabama State Board of Podiatry, I would like to thank you for meeting with us in August to discuss concerns that pertain to the operation of our agency. Certainly, it is apparent that the Board has functioned, too often, in a substandard manner. We take each of the concerns brought by the Sunset Committee seriously, and we met on September 12th and again on October 8th to take steps to rectify these deficiencies.

Soon after the Sunset Committee meeting, Gail Clark, Administrative Assistant for the Board, resigned. This resignation has been accepted. We are active in the process of submitting a bid proposal for a professional individual or company, acquainted with state procedures, to take over the administrative work of the Board. The interview and bid process has already begun.

### **Significant Item 1:**

It is apparent that licensees believe that the current scope of practice in Alabama is too restrictive. We are statutorily excluded from treating the ankle, despite our training. In fact forty seven states allow podiatrists to treat the ankle, with Alabama being one of only three with

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October 6, 2004

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this exclusion. With input from the Sunset Committee, and the Alabama Podiatric Medical Association, legislation will be introduced to raise the scope of practice to the national standard.

**Significant Item 2:**

Currently podiatrists are not defined as physicians in Alabama, which is inconsistent with the national standard. With help of the Sunset Committee, legislation will be introduced to define us as physicians.

**Significant Item 3:**

The method by which an exam for a new licensee is administered, is antiquated. The Sunset Committee will be asked to introduce a bill to change the laws regarding administration of exams. Additionally, the board will be contracting with a company who can test more efficiently.

**Significant Item 4:**

There are eleven deficiencies outlined in this section (A-K). Most of these are procedural in nature. As stated initially, we are initiating the bid process to employ an individual or agency better acquainted with State policies and procedures to address these items.

A. Late payments of invoices will no longer occur with the implementation of monthly reports to the Treasurer.

B. Lack of insurance for Board property had been actually corrected and paid for before the Sunset meeting occurred.

C. Lack of an information system backup had also been accomplished, prior to the Sunset meeting, with the use of a back-up disc maintained on a schedule, but we will look to improve as necessary and, we have talked with Mr. Wang of Archives concerning the design of the disaster recovery plan.

D. Regarding the listing of fees, the Board will promulgate a new

Representative Howard Sanderford  
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rule for license fees. It has been suggested that this fee be increased from \$300.00 to \$350.00, as well as an increase in the controlled substance renewal fee. This discussion is on going.

E. The handling of the destruction of voided controlled substance permits will become a part of our RDA and will be handled accordingly. The numbers of the destroyed permits were maintained and reviewed by an auditor but the actual permits were not. We will maintain the actual voided permits in the future along with the numbering system for accountability.

F. Previously, funds received were held until the next fiscal year in order not to be required to divert funds exceeding the \$10,000.00 threshold. Now that the threshold has been increased, this will no longer occur.

G. Inappropriate signatures had been used on 2 checks and this has been rectified. Our new system will have the administrator obtain operational funds from the Board Treasurer on a monthly basis, pay expenses, and provide a monthly report back to the Board. Until the new administrator is in place, the Board Treasurer will disburse payments and make deposits.

H. Regarding contracts for services, our attorney's contract is in the Contract Review process for the upcoming session. All other persons contracting with the Board to perform any services will be handled according to the appropriate process. As previously stated, we are involved in the bid process for a new administrator.

I. A complete and thorough review of our Rules and Regs will be initiated and research will be performed to determine the author of all Rules. As previously stated, work needs to be done on promulgation of new Rules which will be assigned at our next Board meeting.

J. The website will be updated with current rules as there have been a couple of changes we have not corrected and we will be

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promulgating some new ones, as well. This will occur as quickly as possible.

K. We will insure, as part of our annual review of Board activities, that copies of the annual reports are received by those departments that require them by law.

#### Irregularities of Prior Findings:

a. All 1099 Forms will be filed by our new administrator. These will be reviewed each year by the Board Treasurer. The IRS will be contacted regarding previous years.

b. W-2's will be distributed to Board members from now on. the Board Treasurer will interface with the IRS to determine how to handle previous years.

c & d. We will comply with the travel law and file necessary forms prior to travel, as required. Documentation of receipts will be according to state policy.

e. Our new administrator will be required by contract to comply with appropriate accounting principles and recordkeeping procedures and will supply a monthly report to the board Treasurer.

f. We will review all board minutes and make certain they are properly signed and executed according to Guideline for taking Formal Minutes. The Board Secretary will oversee this function.

g. Regarding inventory, our current reports show all items accounted for and discrepancies are totally resolved. We were given a commendation from the State Auditor's department.

In addition to addressing and resolving the previously mentioned discrepancies, the Board has restructured and reorganized its committees, assuring appropriate accountability through regular monthly meetings for

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the next six months, quarterly thereafter, with active email communication inbetween.

The Board will also be working more closely with the Alabama Podiatric Medical Association (ALPMA), and has already met with its new President regarding ALPMA concerns.

The above deficiencies, as noted previously have been chronic and recurrent in the past. The Alabama Board of Podiatry realizes the gravity of this pattern. We have a plan to rectify each of the concerns brought by the Sunset Committee, and it is our goal to become an exemplary regulating and licensing Board. We sincerely appreciate the guidance of the Sunset Committee, and the opportunity to improve, and we look forward to our next meeting.

Respectfully,



Mark S. Veres, DPM  
President, Alabama Board of Podiatry

Robert I. Russell, DPM  
Vice President

John Calcatera, DPM  
Secretary

Jay Morgan, DPM

Tara Brasington, DPM

Patricia Antero, DPM

Darren Barron, DPM

